MONTANA LEGISLATIVE HISTORY

Chapter 526 1999

Bill H 586 S _____ Original bill & history ✓ C

H. Committee on Bus & Labor

Hearing Date(s) _____ ___C

3/9 ✓C

_____ ___C

_____ ___C

Date Out 2/17 ✓C

S. Committee on Bus & Industry

Hearing Date(s) _____ ___C

3/18 ✓C

_____ ___C

_____ ___C

out 3/23 ✓

Free Conference Committee 4-12-99

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

The Law Library has no Free Conference Committee minutes Or this bill.

Free Conference Committee Rept 4-14-99

AUGUST 2000

THE FOLLOWING MINUTES WERE REPORTED BY THE HISTORICAL SOCIETY ARCHIVES AS BEING ERASED FROM THE TAPES AND ARE NO LONGER AVAILABLE FROM ANY SOURCE.

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 505 Introduced by Fuchs, et al. *LC0622 Drafter: Vandenbosch*

Modify the Park Dedication Requirements under the Montana Subdivision and Platting Act;...

11/19	Fiscal Note Needed		
2/04	Introduced and 1st Reading		
2/04	Referred to Natural Resources		
2/08	Hearing		
2/12	Tabled in Committee		
3/01	Missed Deadline for General Bill Transmittal		

HB 506 Introduced by Sliter, et al. *LC1004 Drafter: Maly*

Provide Consumers Clearer Choice in Auto Glass Installation and Other Repairs by Clarifying What Information an Insurer May Give an Insured or Claimant;...

2/04	Introduced and 1st Reading		
2/04	Referred to Business and Labor		
2/09	Hearing		
2/18	Committee Executive Action--Bill Passed as Amended	15	3
2/18	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed	84	14
2/22	3rd Reading Passed	83	13
	Transmitted to Senate		
2/23	Referred to Business and Industry		
3/18	Hearing		
3/23	Committee Executive Action--Bill Concurred as Amended	6	1
3/23	Committee Report--Bill Concurred as Amended		
3/26	2nd Reading Concurred as Amended	39	10
3/29	3rd Reading Concurred	43	6
	Returned to House with Amendments		
4/10	2nd Reading Senate Amendments Not Concurred	98	2
4/10	Free Conference Committee Appointed		
4/14	Hearing		
4/14	Free Conference Committee Report Received		
4/19	2nd Reading Free Conference Committee Report Adopted	96	3
4/20	3rd Reading Free Conference Committee Report Adopted	83	14
	Senate		
4/12	Free Conference Committee Appointed		
4/14	Free Conference Committee Report Received		
4/15	2nd Reading Free Conference Committee Report Adopted	47	0
4/16	3rd Reading Free Conference Committee Report Adopted	48	2
4/20	Sent to Enrolling		
4/21	Returned from Enrolling		
4/21	Signed by Speaker		
4/22	Signed by President		
4/23	Transmitted to Governor		
4/30	Signed by Governor		
5/04	Chapter Number Assigned		
	Chapter Number 526		
	Effective Date: 10/01/1999 - All Sections		

HOUSE BILL NO. 506

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-225, MCA, is amended to read:

"30-14-225. Prohibited practices -- advertising allowed. (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business

or location; or

(b) mention or provide the name of a particular automobile repair business or location."

Section 2. Section 33-18-221, MCA, is amended to read:

"33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited -- lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services

to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service."

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222. Lowest prevailing market price.** For purposes of 33-18-221, ~~and~~ 33-18-223, and 33-18-224, "lowest prevailing market price" means the lowest competitive and generally accepted market price in a local area. The lowest prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; ~~or~~

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work or that installs or manufactures glass or provides glass for installation."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile ~~body~~ repair shops prohibited -- certain requirements -- allowances.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular automobile repair business or location; ~~or~~

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or provides an incentive or inducement for an insured person to use a particular automobile repair business or location; or

(c) except as provided in subsection (2):

(i) suggest or encourage the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business.

(2) ~~For the purposes of this section, an incentive or inducement does not include~~ An insurer may:

(a) ~~providing~~ provide an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;

(b) ~~providing~~ provide an insured person or a customer with a list of particular ~~body shops~~ automobile repair businesses or locations that are reasonably close to the insured person or customer ~~meeting~~ that meet reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; ~~or~~

~~(c) referring to a warranty issued by an automobile repair business or location~~ and the request is not prompted or suggested by the insurer.

(3) If an insurer provides an insured person with the list described in subsection (2)(b), the insurer shall:

(a) prior to providing the list, file in writing with the commissioner the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards must be available to the public and may not include as criteria the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) at least quarterly during each calendar year, include on the list any automobile repair business or location that indicates in writing to the insurer that the business or location intends to meet the standards and be placed on the list.

(4) If an insurer does not include an automobile repair business or location on the list allowed under subsection (2)(b) when the business or location has requested to be included on the list, the insurer shall provide to the rejected business or location a written explanation for why the business or location has failed to meet the standards required for inclusion. The written explanation must be provided within 60 days of the insurer's receipt of the automobile repair business's or location's request. The business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

(5) An automobile repair business or location may not submit a written request to an insurer to be placed on the list provided for in subsection (2)(b) more than once each calendar year. An insurer may remove an automobile repair business or location from the list if the business or location ceases to meet the reasonable standards of quality, service, and safety established by the insurer as provided in subsection (3)(a). An insurer shall provide a written explanation of why the automobile repair business or location has failed to meet the standards and must allow the business or location at least 120 days to meet the standards before being removed from the list.

(6) If an insurer changes its reasonable standards of quality, service, and safety, the changes must be filed with the commissioner for public inspection. An automobile repair business or location must be allowed at least 120 days from the time that the changes are filed to meet the changed standards before the business or location may be removed from the list.

(7) The insured may use a business or location at the insured's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile ~~body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ repair services than the lowest prevailing market price, as defined

in 33-18-222. An insurer shall inform the insured person of the insured person's rights under this subsection and may not mention a particular automobile repair business or location.

~~(4)~~(8) If the insured person uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(5)~~(9) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(6)~~(10) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting on behalf of the insurance company.

~~(7)~~(11) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"**33-18-1006. Desist orders for prohibited practices -- court injunctions.** (1) Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred."

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 9, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Billie Krenzler (D)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 353, HB 504, HB 506, HB 493, HB 522, HJR 16,, 2/4/1999
Executive Action: HB 353, HB 522, HB 523, HJR 16, HB 381, HB 493,HB 504

Scott Smith, small business owner.
{Tape : 1; Side : A; Approx. Time Counter : 320 - 336}

Riley Johnson, National Federation of Independent Businesses.
{Tape : 1; Side : A; Approx. Time Counter : 336 - 340}

Opponents' Testimony: Claudia Clifford, State Auditor's Office
{Tape : 1; Side : A; Approx. Time Counter : 340 - 448}

Questions from Committee Members and Responses: Rep. Brown, Pavlovich, Bookout and Simon questions witnesses.
{Tape : 1; Side : A; Approx. Time Counter : 448 - 500}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 98}

Closing by Sponsor: Rep. Sliter closed HB 504.
{Tape : 1; Side : B; Approx. Time Counter : 98 - 128}

HEARING ON HB 506

Opening Statement by Sponsor: Rep. Sliter, HD 76 introduced HB 506.
{Tape : 1; Side : B; Approx. Time Counter : 128 - 143}

Proponents' Testimony: Rep. Quilici, HD 36
{Tape : 1; Side : B; Approx. Time Counter : 143 - 161}

Gary Spath, Deputy Auditor, State Auditor's Office.
{Tape : 1; Side : B; Approx. Time Counter : 161 - 175}

Frank Crowley, Collision Repair Specialist
{Tape : 1; Side : B; Approx. Time Counter : 175 - 214}

Rep. Trudy Schmidt, HD 42.
{Tape : 1; Side : B; Approx. Time Counter : 214 - 252}

Jack Gregg, President, Mt. Collision Repairs.
{Tape : 1; Side : B; Approx. Time Counter : 252 - 277}

Truman Strof, Magic City Glass
{Tape : 1; Side : B; Approx. Time Counter : 277 - 292}

Pat Strof, Magic City Glass and Montana Ind. Glass Dealers
{Tape : 1; Side : B; Approx. Time Counter : 292 - 330}

Larry Laser, Billings Glass company
{Tape : 1; Side : B; Approx. Time Counter : 330 - 373}

Donna Fasteneau, Billings Glass Operator, **EXHIBIT(4)**
{Tape : 1; Side : B; Approx. Time Counter : 373 - 393}

Jacqueline Ayers,
{Tape : 1; Side : B; Approx. Time Counter : 393 - 420}

Jean McDonough, Shelby Glass
{Tape : 1; Side : B; Approx. Time Counter : 420 - 454}

Lucky Siebert, Siebert Glass, Laurel
{Tape : 1; Side : B; Approx. Time Counter : 454 - 478}

Greg Smith
{Tape : 1; Side : B; Approx. Time Counter : 478 - 500}

Robert Matty, glass dealer
{Tape : 2; Side : A; Approx. Time Counter : 0 - 5}

Dean Randash,, NAPA dealer
{Tape : 2; Side : A; Approx. Time Counter : 5 - 12}

Annie Bartos, Department of Commerce, **EXHIBIT(5)**
{Tape : 2; Side : A; Approx. Time Counter : 12 - 18}

Gary Langford, Great Falls,
{Tape : 2; Side : A; Approx. Time Counter : 18 - 22}

Gary Harris, Billings, MT
{Tape : 2; Side : A; Approx. Time Counter : 22 - 23}

Pat McDonough, Shelby Glass
{Tape : 2; Side : A; Approx. Time Counter : 23 - 30}

Bob Shelte, Butte, MT
{Tape : 2; Side : A; Approx. Time Counter : 30 - 55}

Skip Clevenger, Bitterroot Glass
{Tape : 2; Side : A; Approx. Time Counter : 55 - 62}

Lance Shall's Great Falls, MT
{Tape : 2; Side : A; Approx. Time Counter : 62 - 66}

Randy Lasar, Plentywood dealer.
{Tape : 2; Side : A; Approx. Time Counter : 66 - 68}

Duane Test, Billings, MT
{Tape : 2; Side : A; Approx. Time Counter : 68 - 71}

Jeff Alsburg, Glasgow Dealer
{Tape : 2; Side : A; Approx. Time Counter : 71 - 73}

Kevin Massick, Billings, MT
{Tape : 2; Side : A; Approx. Time Counter : 73 - 76}

Opponents' Testimony: Roger McGlen, Ex. Dir. of National Independent Insurers.
{Tape : 2; Side : A; Approx. Time Counter : 76 - 134}

Greg Van Horrsen, State Farm Insurance
{Tape : 2; Side : A; Approx. Time Counter : 134 - 301}

Jon Metropolis, Farmers Insurance Group.
{Tape : 2; Side : A; Approx. Time Counter : 301 - 388}

Mark Baker, National Assn of Ind. Insurers.
{Tape : 2; Side : A; Approx. Time Counter : 388 - 421}

Jacqueline Lenmark, American Insurance Alliance.
{Tape : 2; Side : A; Approx. Time Counter : 421 - 488}

Questions from Committee Members and Responses: Reps. Simons, Pavlovich, Bookout, Stovall, and Ewer questions witnesses.
{Tape : 2; Side : A; Approx. Time Counter : 488 - 500}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 120}

Closing by Sponsor: Rep. Sliter closed HB 506.
{Tape : 2; Side : B; Approx. Time Counter : 120 - 173}

HEARING ON HB 493

Opening Statement by Sponsor: Rep. Harrington, HD 38, introduced HB 493.
{Tape : 2; Side : B; Approx. Time Counter : 173 - 253}

Proponents' Testimony: Craig Sweet, Mont Prig EXHIBIT(6)
{Tape : 2; Side : B; Approx. Time Counter : 253 - 322}

Opponents' Testimony: Darcy Klien, Collection Bureau Services. EXHIBIT(7)
{Tape : 2; Side : B; Approx. Time Counter : 322 - 500}

Jacqueline Larson, EXHIBIT(9)
{Tape : 3; Side : A; Approx. Time Counter : 0 - 49}

EXHIBIT 4
DATE 2/9/99
HB 306

UNITED SERVICES AUTOMOBILE ASSOCIATION
P.O. Box 35718, Colorado Springs, CO 80935-3718

THOMAS JENKO
8299 MONTANA HWY 35
BIGFORK MT 59911

November 23, 1998

Policyholder: Denise Wigginton
Reference Number: 3206193-7104-9-762
Date Of Loss: November 21, 1998
Loss Location: Kalispell, Montana

Mr. Jenko:

This letter is per your request.

USAA holds the right to inspect your damages at one of our authorized locations. However, you can have the repairs done at any shop of your choice, but USAA will pay the damages based on the appraisal written by our authorized person/persons.

Should you have any questions regarding this issue, do not hesitate to call our office.

Sincerely,

Maribel Herbst
Auto Claims Representative
USAA MOUNTAIN STATES REGIONAL OFFICE
Phone: 1-800-531-8222 EXT. 36839
Fax Phone: 800-541-2947

3206193 - 9 - MT - 11/21/98 - 762 - 33 - C200

P.01

TRANSACTION REPORT

NOV-23-98 MON 12:37

DATE	START	SENDER	RX TIME	PAGES	NOTE
NOV-23	12:36	5811	1'18"	2	OK

15

EXHIBIT 5
DATE 2/9/99
HB 506

HOUSE BILL 506
(SECTION BY SECTION SUMMARY)

SECTION 1 (DEPARTMENT OF COMMERCE - UNFAIR TRADE PRACTICES)

*** EXTENDS THE BAN ON "REBATING" TO INCLUDE BODY SHOPS (ALREADY APPLIES TO GLASS)**
(THIS IS EXACTLY WHAT REP. GALLUS' BILL - HB 154 - DOES)

*** ADDS UNAUTHORIZED DIRECTING OF CONSUMERS TO BODY SHOPS AS AN UNFAIR TRADE PRACTICE**

SECTION 2 (GLASS SHOPS)

*** PROHIBITS GLASS SHOPS FROM CHARGING INSUREDS MORE THAN PERSONS WITHOUT INSURANCE**

SECTION 3 ("LOWEST PREVAILING MARKET PRICE")

*** EXTENDS IT TO BODY SHOPS - A TECHNICAL CORRECTION**

*** ADDS LANGUAGE TO REFLECT THE WAY MOST INSURERS APPROPRIATELY DETERMINE THE MARKET PRICE**

SECTION 4 (PROHIBITED ACTIVITIES - GLASS)

*** PROHIBITS STEERING OF CONSUMERS THROUGH:**

USE OF CLAIMS PROCESSING AGENTS
INFORMATION SHARING BY BILLS PROCESSORS

SECTION 5 (DESIGNATION OF PARTICULAR SHOPS - CLARIFICATIONS)

*** CLARIFIES THAT INSURERS HAVE AN OPTION WHEN IT COMES TO GIVING LISTS OF SHOPS TO CONSUMERS - EITHER DON'T MENTION ANY PARTICULAR SHOP(S) OR IF YOU WANT TO DISTRIBUTE A LIST, OPEN THE LIST UP TO ALL SHOPS MEETING THE CRITERIA. THIS IS DONE BY TWO ASPECTS OF THE BILL:**

*** MAKES LANGUAGE MORE ENFORCEABLE BE CLARIFYING WHAT MAY NOT BE PROVIDED TO CONSUMER**

*** MAKES CLEAR THE CIRCUMSTANCES WHEN LISTS OF SHOPS MAY BE GIVEN TO CONSUMER BY OPENING UP THE LIST**

*** REQUIRES THAT CONSUMERS BE GIVEN NOTICE OF THEIR RIGHTS TO CHOOSE THEIR OWN SHOP**

*** CLARIFIES THAT AN INSURER'S IMMUNITY FROM LIABILITY FOR AN INDEPENDENT ADJUSTER'S ACTIONS APPLIES WHERE THE ADJUSTER IS IN FACT INDEPENDENT FROM THE INSURER**

SECTION 6 (ENFORCEMENT)

*** ADDS SECTION 18-33-224 TO COMMISSIONER'S AUTHORITY TO ISSUE CEASE AND DESIST ORDERS (TECHNICAL CORRECTION)**

*** ADDS ATTORNEY GENERAL AND COUNTY ATTORNEY AS OTHERS AUTHORIZED TO ENFORCE THESE PROVISIONS OF LAW**

*** * * END * * ***

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 17, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 639 and 640 additional testimony heard (2/15/99)

Executive Action: HB 526, HB 639, HB 640, HB 506, HB 547, HB 546, HB 572, HB 592, HB 615, HB 618, HB 624, HB 603, HB 604, HB 611, HB 181, HB 521, HB 395, HB 521, HB 515, HB 516, HB 518, HB 519, HB 529

HEARING ON HB 639 AND 640

Testimony: Montana Higher Education and University System testified.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 21}

EXECUTIVE ACTION ON HB 526

Motion: REP. PAVLOVICH moved that HB 526 DO PASS.
{Tape : 1; Side : A; Approx. Time Counter : 21 - 31}

Motion/Vote: REP. PAVLOVICH moved that HB 526 BE AMENDED. Motion carried unanimously.
{Tape : 1; Side : A; Approx. Time Counter : 31 - 41}

Motion/Vote: REP. PAVLOVICH moved that HB 526 DO PASS AS AMENDED. Motion carried 14-4 with Masolo, McKenney, Sliter, and Trexler voting no.
{Tape : 1; Side : A; Approx. Time Counter : 41 - 51}

EXECUTIVE ACTION ON HB 639 AND 640

Motion/Vote: REP. PAVLOVICH moved that HB 639 AND 640 DO PASS. Motion carried 14-4 with Masolo, McKenney, Sliter, and Trexler voting no.
{Tape : 1; Side : A; Approx. Time Counter : 51 - 114}

EXECUTIVE ACTION ON HB 506

Motion: REP. SLITER moved that HB 506 DO PASS.
{Tape : 1; Side : A; Approx. Time Counter : 114 - 124}

Motion/Vote: **REP. SLITER** moved that **HB 506 BE AMENDED,** segregating #1. **Motion carried unanimously.**
{Tape : 1; Side : A; Approx. Time Counter : 124 - 269}

Motion: **REP. SLITER** moved that **HB 506 BE AMENDED.** Amendment No. 1 failed on a voice vote.
{Tape : 1; Side : A; Approx. Time Counter : 269 - 279}

Motion/Vote: **REP. SLITER** moved that **HB 506 BE AMENDED. Motion carried unanimously.**
{Tape : 1; Side : A; Approx. Time Counter : 279 - 280}

Motion: **REP. SLITER** moved that **HB 506 DO PASS AS AMENDED.**
{Tape : 1; Side : A; Approx. Time Counter : 280 - 308}

Motion/Vote: **REP. LAWSON** moved that **HB 506 BE AMENDED. Motion carried unanimously.**
{Tape : 1; Side : A; Approx. Time Counter : 308 - 350}

Motion/Vote: **REP. SLITER** moved that **HB 506 DO PASS AS AMENDED. Motion carried 15-3 with Ewer, Matthews, and Tuss voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 350 - 356}

EXECUTIVE ACTION ON HB 547

Motion/Vote: **REP. MASOLO** moved that **HB 547 BE TABLED. Motion carried 16-2 with Juneau and Pavlovich voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 356 - 368}

EXECUTIVE ACTION ON HB 546, HB 544, HB 545

Motion/Vote: **REP. TREXLER** moved that **HB 546, HB 544, HB 545 BE TABLED. Motion carried 17-1 with Pavlovich voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 368 - 397}

EXECUTIVE ACTION ON HB 572

Motion: **REP. SQUIRES** moved that **HB 572 DO PASS.**
{Tape : 1; Side : A; Approx. Time Counter : 397 - 402}

Motion/Vote: **REP. SQUIRES** moved that **HB 572 BE AMENDED. Motion carried unanimously.**
{Tape : 1; Side : A; Approx. Time Counter : 402 - 483}

APPROVED BY COM ON
BUSINESS & INDUSTRY

HOUSE BILL NO. 506

INTRODUCED BY P. SLITER, C. AHNER, S. ANDERSON, T. BECK, M. BRAINARD, R. DALE, L. GRINDE, M. HALLIGAN, B. LAWSON, B. MCCARTHY, D. MOOD, K. OHS, B. PAVLOVICH, B. RANEY, T. SCHMIDT, D. SHEA, J. STOVALL, C. TUSS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices -- advertising allowed.** (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured

SECOND READING

regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or

(b) mention or provide the name of a particular automobile repair business or location."

Section 2. Section 33-18-221, MCA, is amended to read:

"**33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the ~~lowest~~ prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may

agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service."

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222.** ~~**Lowest prevailing**~~ **PREVAILING market price.** For purposes of 33-18-221, ~~and~~ 33-18-223, and 33-18-224, "~~lowest~~ prevailing market price" means the ~~lowest~~ competitive and generally accepted market price in a local area. The ~~lowest~~ prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; ~~or~~

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the ~~lowest~~ prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile

glass dealers to perform glass replacement or glass repair work or that installs or manufactures glass or provides glass for installation."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile ~~body~~ repair shops prohibited -- certain requirements -- allowances.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person insured OR A CLAIMANT under the policy use a particular automobile repair business or location; ~~or~~

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person OR A CLAIMANT or provides an incentive or inducement for an insured person OR A CLAIMANT to use a particular automobile repair business or location; or

(c) except as provided in subsection (2):

(i) suggest or encourage the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business.

(2) ~~For the purposes of this section, an incentive or inducement does not include~~ An insurer may:

(a) ~~providing~~ provide an insured person or a ~~customer~~ CLAIMANT with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~customer~~ CLAIMANT that offer a warranty for the automobile repair services provided by the businesses or locations; OR

(b) ~~providing~~ provide an insured person or a ~~customer~~ CLAIMANT with a list of particular ~~body shops~~ automobile repair businesses or locations that are reasonably close to the insured person or ~~customer~~ CLAIMANT ~~meeting~~ that meet reasonable standards of quality, service, and safety ~~when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location and the request is not prompted or suggested by the insurer~~.

(3) If an insurer ~~provides~~ ELECTS TO PROVIDE an insured person OR A CLAIMANT with the list described in subsection (2)(b), the insurer shall:

(a) prior to providing the list, ~~file in writing with the commissioner~~ UPON THE REQUEST OF ANY AUTOMOBILE REPAIR BUSINESS OR LOCATION, MAKE AVAILABLE the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards ~~must be available to the public and may not include as criteria~~ MAY NOT EXCLUDE A BUSINESS OR LOCATION FROM BEING ON THE LIST SOLELY ON THE BASIS OF the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) at least quarterly during each calendar year, include on the list any automobile repair business or location that indicates in writing to the insurer that the business or location ~~intends to meet the standards and~~ MEETS THE STANDARDS AND DESIRES TO be placed on the list.

(4) If an insurer does not include an automobile repair business or location on the list allowed under subsection (2)(b) when the business or location has requested to be included on the list, the insurer shall provide to the rejected business or location a written explanation for why the business or location has failed to meet the standards required for inclusion. The written explanation must be provided within ~~60~~ 30 days of the insurer's receipt of the automobile repair business's or location's request. The business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

(5) An automobile repair business or location may not submit a written request to an insurer to be placed on the list provided for in subsection (2)(b) more than once each calendar year. An insurer may remove an automobile repair business or location from the list if the business or location ceases to meet the reasonable standards of quality, service, and safety established by the insurer as provided in subsection (3)(a). An insurer shall provide a written explanation of why the automobile repair business or location has failed to meet the standards and must allow the business or location ~~at least~~ A MAXIMUM OF 120 days to meet the standards before being removed from the list.

(6) If an insurer changes its reasonable standards of quality, service, and safety, the changes must be ~~filed with the commissioner for public inspection~~ PROMPTLY GIVEN TO EACH AUTOMOBILE REPAIR BUSINESS OR LOCATION ON THE LIST. An automobile repair business or location must be allowed at least 120 days from the time that the changes are filed to meet the changed standards before the business or

25

location may be removed from the list.

(7) The insured may use a business or location at the insured's OR CLAIMANT'S sole discretion~~, and the~~. THE insurance company shall pay for the reasonable and necessary cost of the automobile ~~body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ repair services than the ~~lowest~~ prevailing market price, as defined in 33-18-222. An insurer shall inform the insured person OR CLAIMANT of the insured person's OR CLAIMANT'S rights under this subsection ~~and may not mention a particular automobile repair business or location~~.

~~(4)~~(8) If the insured person OR CLAIMANT uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(5)~~(9) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(6)~~(10) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting on behalf of the insurance company.

~~(7)~~(11) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"**33-18-1006. Desist orders for prohibited practices -- court injunctions**. (1) Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred."

NEW SECTION. **SECTION 7. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE

SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

27

HOUSE BILL NO. 506

INTRODUCED BY P. SLITER, C. AHNER, S. ANDERSON, T. BECK, M. BRAINARD, R. DALE, L. GRINDE, M. HALLIGAN, B. LAWSON, B. MCCARTHY, D. MOOD, K. OHS, B. PAVLOVICH, B. RANEY, T. SCHMIDT, D. SHEA, J. STOVALL, C. TUSS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

THIRD READING

78

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 18, 1999 at 8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 607, 3/10/1999
HB 506, 3/10/1999
HB 264, 3/10/1999
HB 201, 3/10/1999
Executive Action:

{Tape : 1; Side : A; Approx. Time Counter : 0}

within the medical community. Health care is in a state of continuing reform. Consider that fair and equitable health care reform depends on maintaining a very delicate balance between choice and cost and between finding ways to avoid costly litigation. I believe this bill does that with the peer review process. It also provides some measure of recourse for the patient if an adverse health care decision has been made which has wronged them. If an HMO makes a health care treatment decision that affects the quality of care and treatment that one is given, I believe we would want that organization to be held accountable and responsible within a standard of ordinary care, This simply means, as defined in the bill, a degree of care that a person of ordinary prudence in the same profession or specialty or area of practice would use in the same or similar circumstance. When I presented this bill on the House Floor, I had spoken to the fact that a poll was taken of Montanans and done by Congressman Hill. It was not done by him but done for him. The poll taken asked people, "Do you believe managed care organizations and insurance companies should be liable for decisions that they make which delay or deny health care?" Eighty-three percent said "yes", nine percent said "no" and eight percent said "they didn't know." Please give careful consideration to a very hotly contested bill and would ask you to do what is right for patients in Montana. Thank you for your time. **SEN. BISHOP** will carry the bill on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 21}

HEARING ON HB 506

Sponsor: **REP. PAUL SLITER, HD 76, SOMERS**

Proponents: **REP. JOE QUILICI, HD 36, BUTTE**
REP. TRUDI SCHMIDT, HD 42, GREAT FALLS
Frank Crowley, MT Car Repair Specialists
Gary Spaeth, State Auditor's Office
Truman Strouf, Magic City Glass, Billings
Pat Strouf, Magic City Glass, Billings
Jeannie McDonough, Shelby Glass

Jacqueline Ayers, Golden Nugget Body & Paint, Billings
Donna Fastenau, Hanks Body Shop, Inc., Billings
Skip Clevenger, Bitterroot Glass, Hamilton
Bernadette Clevenger, Bitterroot Glass, Hamilton
Bob Schulte, Schulte Glass, Butte
Jamie Near, Jamie's Westside Auto Body Shop, Helena
Kendall Sundheim, Bozeman
Bud LaRocque, Crystal Clear Glass, Inc., Missoula
Gary Lankford, 3-Way Auto Body, Inc., Great Falls
Mike Oliver, Econo Glass Co., Billings
Larry Lasar, Econo Glass Co., Billings
Matt McDonnell, Big Sky Collision Center, Billings
Lucky Seibert, Seibert's Glass & Detail, Laurel
Robert Mytty, Crystal Clear Auto Glass, Missoula
Gary Harris, Auto Body Specialists, Inc., Billings
Bob Davis, Bob's FasBreak Auto Glass, Billings
Marvin Urlacher, FasBreak Auto Glass
Debbie Berney, Professional Insurance Agents Assoc. of MT
Jeff Alsberg, Triple A Glass, Inc., Glasgow
Daryl Neigard, Neigard's Auto Body, Great Falls
Dennis Jenkins, Professional Auto Glass, Missoula
Sandra Rick, Consumer Citizen, Billings

Opponents: Greg Van Horssen, State Farm
Rick Cochrane, Cockrane Insurance Agency, Helena
Jodi Smoller, Allstate Insurance Co.
Brad Nelson, Cascade Auto Glass
Lynda Reisbeck, Independent Agent, State Farm
Laura Kotelman, Associate Counsel, National Assoc. of Independent Insurers
Ralph Wisher, Able Body Shop, Kalispell
Jacqueline Lenmark, American Insurance Assoc.
Sue Weingartner, Alliance of American Insurers
Jon Metropoulos, Farmer's Insurance Co.

Opening Statement by Sponsor:

REP. PAUL SLITER, HD. 76, SOMERS. I present to you **HB 506.** This bill is designed to put a few teeth into a law that was passed last session. There are a number of proponents for this legislation. This bill is necessary and needs the enforcement arm of our government to be diligent to enforce this legislation if it is passed. It creates a few new restrictions for the body

and glass repair shops and it puts various laws pertaining to both kinds of repair shops on a more parallel foundation. This bill is about consumer choice and small business free competition. And it seeks to remedy anti-competitive practices.

Proponents' Testimony:

REP. JOE QUILICI, HD 36, BUTTE. I have been in the glass business for about 45 years. This is one of the best bills to protect the consumer in Montana and to protect the small businesses in Montana. There is a problem with glass brokers. They have a centralized billing. You sign a contract with them. These contracts can cost as much as $5,000. Some of these brokers will put the small glass companies out of business. One of the largest insurance companies in the country has a place called Links where the bill is sent to. Links is owned by PPG Industries. They are one of the largest glass companies in the world. They are now going to dictate that you have to buy so many of your windshields from PPG, or you won't be able to get your billing through Links or even get a windshield job from the insurance company. These practices are unethical. They may be unconstitutional here in the state.

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS. This bill is a bipartisan measure just as it's predecessor, **HB 543,** which I carried last session was also bipartisan. The purpose of both bills is fundamentally the same: to protect consumer choice and maintain free open and fair competition between auto body and glass repair shops. You will hear how insurance companies are actively manipulating consumer choice to benefit themselves, not consumers, and how free enterprise and the viability of honest and professional small businesses is suffering all over Montana as a result. I urge you do adopt **HB 506** to close the loopholes in current law that the insurance industry continues to exploit.

{Tape : 2; Side : A; Approx. Time Counter : 29.3}

Frank Crowley, MT Collision Repair Specialists. In essence, the bill has two features. One addresses the practice of glass networking and that is going to amend Section 223 of the bill which is on page three. Most of the other provision in here address the issue that **REP. SCHMIDT** talked about which was to

clarify and strengthen the law and make it clear so that the Insurance Commission can enforce it. One other small amendment is the response to the insurance companies' request about the lowest prevailing market price. The amendments that you have, the word "lowest" has been restored. Our group felt the insurance companies had a legitimate argument and when that amendment was made in the House, it wasn't fully considered. **REP. SLITER** has proposed to restore that language. There is a series of amendments in here related to independent insurance agents. We have spent considerable time in discussing the concern that they had. Sometimes they are asked about a shop and because they are an independent agent and represent more than one company, we have tried to respond to that concern so they could dispense some minimal information about a shop. So certain parts of the bill do not apply to independent insurance agents. Thank you. We do have a section by section analysis of the bill and the amendments for the committee **EXHIBIT(14)**.

Gary Spaeth, State Auditor's Office. We are in support of **HB 506** and for the last two years I was the designated person in our office to enforce the glass and auto body laws that were passed in the last session. I hear the stories that you are about to hear on a daily basis in my office. As far as the second part, insurance companies under 543 knew the intent of the bill but they also understood that they could go ahead and suggest. In the last instance, when I had my vehicle worked on, they suggested a company. I went there just like everyone else does.

Jack Gregg, Collision Pro, Helena and Chairperson, MT Collision Repair Specialists. We represents 49 auto body repair shops in Montana. The MT Independent Glass Dealers Assoc. is in agreement with my group. You will hear a diverse group today. We urge your support of this bill. It is an excellent vehicle for opening up competition and making sure the free enterprise system works in our state. We ask only for the opportunity to repair your vehicle. Thank you.

Truman Strouf, Magic City Glass, Billings. We are here today because of three words: conspiracy, deception and monopoly. When insurance companies meet with Safelite Auto Glass and they agree to give them first shot at 100% of the glass business, that falls within the definition of a conspiracy. When the consumer calls the 1-800 number, they are led to believe they are still talking with their insurance company; that is deception. When I get an

insurance job and I am forced to bill it through Safelite and they take over 160 days to pay me and withhold a portion of that payment, that is a monopoly. It gives them a very unfair business advantage. Insurance companies are involved in this. I am here to tell you they did, would and are. There are over 150 small businesses in Montana that can't live with this. We need **HB 506.** Thank you very much.

Pat Strouf, Magic City Glass, Billings. Our eldest son and family are in business with us. We have been in the glass business for 18 years. I wish to draw your attention to page 4, Section 5, lines 14 through 18 and would like to give you a brief example. On Feb. 8, 1999, a customer called our shop and asked if we would pick her car up and fix a chip in her windshield. She said she would leave her insurance information in the car and asked us to contact her agent. We contacted the agent and asked them to please send us a glass breakage report. I was told by the agent's secretary that they no longer issue glass breakage reports but she would contact their glass shop and they would send us an order. Ten minutes later, my phone rang and it was Safelite Auto Glass, my direct competitor, telling me they would be faxing me an order for the car that we were working on. Safelite gave me a referral number and told me what I could charge and that I must send the bill directly to them. For months I have billed through Safelite as I was directed to do by the insurance company. The insurance company would pay in full to Safelite within seven days and then Safelite purposely held my payment for four months and withheld some of the money that was not theirs to keep. They also called my customer to tell them that next time just call the 1-800 number. I have spent hours on the phone to collect one job after another.

I have it all documented **EXHIBIT(15).** This one I billed the insurance company directly with Safelite's sheet and my invoice. I had my invoice returned 22 days later with a letter attached telling me that it was mandatory that I have a loss report from the agent and furthermore I should not have done without one. I personally drove to the agent's office with letter in hand and the agent then wrote me out the last breakage report that I had requested 22 days earlier. On March 2, I mailed all the paper work back to the insurance company. It has been 40 days and still no payment. I chose this example as it is more straight forward. The majority of what we go through daily for each insurance job is much more time consuming and complicated. If

the insured would have contacted her agent first, she would have been instructed to call the 1-800 number which is Safelite Auto Glass. And I would have been omitted completely. Safelite now tells my customers that I refuse to bill their insurance company so they will have to pay me cash if they still insist on coming to Magic City Glass. I have had several cancellations lately because of these deceptive tactics. The Insurance Commissioner's office has two such incidences that I have turned over to them lately on this matter. One involves an elderly lady on a fixed income. We are the little fish in the bowl with our direct competitor and the insurance companies which decide who gets fed and how much. The consumer has no idea that when they are told to call the 1-800 number they are no longer dealing with their insurance company but under the control of Safelite Auto Glass. Safelite has assured the insurance companies that **HB 506** is all already dead in the water. That is presumptuous on their part, don't you think? We need your help. Give us back our level playing field so we can at least have the chance to compete. Please give us your support. Thank you.

{Tape : 2; Side : A; Approx. Time Counter : 40.9}

Jeannie McDonough, Shelby Glass, Shelby. We have owned the shop for 11 years and have five employees. One time we had an elderly gentlemen passing through town. He called the 1-800 number on his card. He was on the phone for a long time. I asked if I could help. He needed to know where Great Falls was. I said it was 80 miles away. He said they want me to take it to their preferred shop in Great Falls. I was upset and asked the person on the other end of the line why I was not a preferred shop. The man then explained that the chip repair was already being done and needed a reference number. The man had to beg those guys thinking all the while he was speaking to his insurance company. Another point I want to make is that I own an office supply. I know we have to compete. My customers know that I may charge more, but my customers don't have to call Wal-Mart and ask them what I can charge the customer, get their name and then send the bill to Wal-Mart for a partial payment. I would appreciate your support of this bill. Thank you.

Jacqueline Ayers, Golden Nugget Body and Paint, Billings. I employee nine people. I have heard this bill called protectionism. This bill is anything but that. This bill is about democracy and the right to choose and the right to a free

enterprise. Seven years ago I may have been naive to believe that we had the right to free enterprise. The carriers strongly oppose this bill and I ask why they oppose free enterprise. They oppose this bill because they lose control. Insurers like control. The customer has the right to choose their insurance company, their coverage and to pay that bill. I just ask for the right to let them choose my shop and for the insurance company to pay me a fair and competitive price. In Section 5 on page 5, lines 6 through 9, the carriers have stated that they should have the right to set standards and they would like to set the standards without restrictions. I don't believe anyone should have such a strong way to do this. State Farm has a wonderful program called Service First and they should be commended for this program. This program has a page of very reasonable requirements and if the shop chooses to meet these requirements, they are allowed to be a part of their program. These requirements are not discriminatory and they do not limit people by size, but are limited by the ability to do the work and the equipment that they own. I tell you there are petty and personal reasons that shops are kept off the preferred lists. When I tried to get on the preferred list I was told my shop didn't have curb appeal. The shop was old, but we kept it looking nice with flowers outside and the office was nice. This past year we built a new building and put in curb appeal. When I applied again, the company said I had curb appeal but I don't do enough of our business. Well, imagine that. When an insurance company can suggest 70-80% of their business go to their preferred shop, I am left with 20 to 30% and that to be divided among 10 other shops that are not part of the preferred list. I hope you will support this bill because competition is good.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Donna Fastenau, Hanks Body Shop, Inc., Billings. We have been in business 35 years and family owned and operated. We employee 16 people. I have copies of signatures from over 300 people **EXHIBIT(16)** from all around the state to show their support of **HB 506.** I have a letter from USAA **EXHIBIT(17)** to show you that what is happening in the glass industry is beginning to happen in the auto body repair side and should be stopped now. Thank you for your support.

Skip Clevenger, Bitterroot Glass, Hamilton. We have been in business for 15 years and would like to have a business to pass

on to our children. The problem that this bill addresses is evident in our valley. We pay taxes and have four employees who are professionals in their field. Their jobs are affected by insurance companies directing our customers to so-called approved or preferred shops. Our customers are told they have to call a 1-800 number and from there they are told they need to go to an approved shop on their list in Missoula which is about 100 miles round trip to have their work done. This is a hardship on people to do. Besides losing local and repeat customers, some of the money that is paid for these repairs do not stay in Montana to support the local glass and auto body shops and the local economy. Please vote for fairness and consumer choice.

Bernadette Clevenger, Bitterroot Glass, Hamilton. I would like to add that this bill needs to be passed to keep the so-called approved shops from destroying the small local shops. I would like to hand out to the Senators a petition **EXHIBIT(18)** that is personally signed by all the local glass and body shops in our community who feel without the passage of **HB 506** how many more years do we have in business.

Bob Schulte, Schulte Glass, Butte. I have written to all the committee and hopefully you have read it. I am in favor in this bill and hope you are too.

Jamie Near, Jamie's Westside Auto Body, Helena. I have been in business for 35 years. I was told years ago that if I did quality work I would get plenty of work. I am confused by how this bill is written. I am a direct repair shop for different companies. I have been of the belief that if a shop is qualified to work on an automobile, it should be the customer's choice to take it there. But my concern is that they be qualified to work on it. Many people come in and want me to fix their car. I try to explain what their rights are. Many companies are very good. State Farm is probably the very best one I have been on. There is some misconception that I am confused about. One of you is trying to explain to me that if this bill goes through, it will give away the insurance companies' choice to even refer one of their customers or an agent to take a car to where they know the auto will be repaired well. How did this bill get turned around so much when I thought our country was about choices. If I get a customer in my shop that is a direct repair from another insurance company and they don't want me to fix their car, I

don't want to fix it. I ask them where they want their car to go and be repaired. That is fine with me.

Kendall Sundheim, Bozeman. I own A1 Auto Glass and have been in business 12 years. As a direct result of the networking in the auto glass business, I have had to let five family men go that were quality professionals in our industry. I hope you will support this bill.

Bud LaRocque, Crystal Clear Glass, Inc., Missoula. I have been in the business for 18 years. My livelihood depends on this bill. Please support this bill.

Gary Lankford, 3-Way Auto Body, Inc., Great Falls. I have been in business for 17 years and seven families depend on my shop to stay in business. We need this bill to pass.

Mike Oliver, Econo Glass Co., Billings. Would you look at Section 4, (d) and (e). Happiness in all of this bill be the day when our checks for our claims don't come from our competitors so they are allowed to have the information as to whom our customers are, who we deal with, the prices we pay, etc. Please support this bill.

Larry Lasar, Econo Glass Co., Billings. I opened this business 16 years ago. I now employ 18 people and their families. Please support this bill.

Matt McDonnell, Big Sky Collision Center, Billings. I have been in business for 20 years. I encourage you to vote for this bill.

Lucky Seibert, Seibert's Glass & Detail, Laurel. We employ and feed three families. Recently an insured came to my office and on a phone call for approval to his insurance company, he was directed, coerced and sent to a Safelite operation. This bill will eliminate that situation.

Robert Mytty, Crystal Clear Auto Glass, Missoula. I just gave an exhibit **EXHIBIT(19)** to be handed out about how people won't pay their bill unless you are a member of Safelite, etc. I employ six people. We need this bill to pass to stay in business.

Gary Harris, Auto Body Specialists, Inc., Billings. I employ ten people. I would like to you support this bill.

Bob Davis, Bob's FasBreak Auto Glass, Billings. I employ three people. Tuesday evening I got a call from Safelite concerning a job I had scheduled and asked me if I would bill them. My customer asked me if they had called and I say that they had. I just about lost the job and had to assure her that I would assume full responsibility for the bill so I could keep the job. I had to sell my job twice to maintain my work. My business is dependent on this bill. I urge your support.

Marvin Urlacher, FasBreak Auto Glass, Billings. We are proponents of this bill.

Debbie Berney, Professional Insurance Agents Assoc. of MT. We are here to offer our support to the amendments that were offered by the sponsor.

Jeff Alsberg, Triple A Glass, Inc., Glasgow. I have been in business 14 years. I support this bill.

Daryl Neigard, Neigard's Auto Body, Great Falls. I have been in business 16 years and I ask you to support this bill.

Dennis Jenkins, Professional Auto Glass, Missoula. I have been in business 18 years and have seen it go downhill in the last 4-5 years. I urge you to vote for this bill.

Sandra Rick, Consumer Citizen, Billings. I am here to tell you the insurance agencies are not doing me a favor by telling me where I have to go. Please pass this bill.

{Tape : 2; Side : B; Approx. Time Counter : 12.3}

Opponents' Testimony:

Greg Van Horssen, State Farm. He gave his testimony and handed in the written copy **EXHIBIT(20)**.

{Tape : 2; Side : B; Approx. Time Counter : 25.2}

Rick Cochrane, Cochrane Insurance Agency, Helena. I would like to address briefly one specific portion of the bill. Would you think about the relationship you have with your insurance agent? If you are in an accident, what kind of questions would you ask? You may want someone to come down and get an estimate in the parking lot. Who can fix your car quickly? Who can match paint well in town? The unfortunate part of this bill is as a producer, I may not mention or provide the name of a particular automobile business or location. I can do is give a list that has been given to me by an insurance company to my client which I feel hurts the relationship we have had maybe for a long time. I oppose the bill and ask that it be killed.

Jodi Smoller, Allstate Insurance Co. She gave her testimony and handed in the written copy and other exhibits **EXHIBIT(21)**.

{Tape : 2; Side : B; Approx. Time Counter : 34.4}

Brad Nelson, Cascade Auto Glass. Our company does several thousand windshield claims on a monthly basis. I was surprised to find myself on the same side of the fence as the insurance companies. There are some concerns that I have with this bill. The issue is about steering. The large insurance company or rather the call center that gets this claim and has a person on the phone and that the person is being coerced and/or manipulated seems to be the concern here. Our facility encounters that on a daily basis. To a certain extent I can agree that the practice is unfair. We have countered that by sending our claims and billings around to other networks and work with them to make sure that we will get paid for claims, that we will be able to do the work when we contact them and make sure that when we have a customer in our shop, they don't get told they have to go down the road to another place. We do quite a number of claims and run those through. This is what the lady from Allstate said about centralized billing and electronic commerce. I think that should be allowed to be continued. A large insurance company needs to have the facility or the ability to recommend where a person can go. We send sales people out to agents when we go into a new area. They need to introduce us to the community. The only way we get introduced is through word of mouth and through advertising. I also testified on **HB 154** dealing with incentives. Incentives are an additional vehicle for a glass or auto body facility to encourage a person to call us first. That enables us to a certain extent to control the claim, but prepare

the person when they do call the 1-800 number to report the claim. We tell them we back up our work and will not be overcharged. I offer a proposed amendment **EXHIBIT(22)** to this bill to address that particular concern. As it is written now, I oppose the bill. Thank you.

Lynda Reisbeck, Independent Agent, State Farm. I take great pride in the service I offer to my clients that come to me with problems as well as after accidents. This bill would eliminate the opportunities for me as an insurance agent to give my clients good, sound advice. Many times clients have come in tears not knowing where to go. This bill would take that privilege away from me. I am in opposition to **HB 506.** Please oppose this bill.

Laura Kotelman, Associate Counsel, National Assoc. of Independent Insurers. We represent over 619 member companies nationwide. One company of ours is USAA. They write for active military personnel. They have several policy holders at Malmstrom AFB who are new to Montana. If they have an accident, they will not be able to call USAA and ask where a reputable body shop is. It is going to hinder their customer service and they are worried about this bill. Next, this bill will force companies to eliminate their direct repair programs. These are an excellent fraud protection programs and will harm consumers in the long run by driving up prices. I would like to hand out some more information **EXHIBIT(23)** Thank you.

Ralph Wisher, Able Body Shop, Kalispell. I have had an auto body shop for 24 years. I employ 23 people. There are laws needed for glass and body shops but I don't think this bill is the one we need for our consumers in this state.

Jacqueline Lenmark, Consumer and American Insurance Assoc. House Bill 506 turns the principles of insurance on their head. It diverts the insurance companies' proper focus on protecting their insured to the protection, development, advertising and support of a different industry. We ask you to table this bill. I would like to give you my personal experience. On Nov. 20, 1987 I was involved in a spectacular automobile accident. My vehicle was significantly damaged. The insurance adjustor who assisted me with that accident gave me recommendations to three body shops here in Helena. I knew better. I exercised my choice as a consumer and went somewhere else. Not to my benefit. The next

41

time, I want to follow the advice of my insurance adjustor. This bill will prevent me from having any of that input. I would ask you, personally, to table **HB 506.**

Sue Weingartner, Alliance of American Insurers. The Alliance is a national trade association representing over 270 property and casualty insurance companies. This bill is an apparent attempt to protect consumers. We believe it would render the cost savings features implemented by insurers ineffective in that it would prohibit insurers from referring claimants and policy holders to shops that through experience insurance companies recognize as being superior. This legislation will harm consumers it seeks to protect since it would result in higher repair costs and probable increase of insurance premiums. We ask you reject **HB 506.** I would like to hand out some more information **EXHIBIT(24).** Thank you.

Jon Metropoulos, Farmer's Insurance Co. First I urge you to read carefully the bill itself and the proposed amendments of the sponsor. I have done that myself. This is not a level playing field as you were told. This actually takes what could be a level playing field if the Auditor's Office would enforce it and uses it against consumers and against insurance companies. One aspect of the amendments in particular, on page 5, subsections 5 and 6 of Section 5 deleted any aspects of balance in this bill. Those sections allowed insurance companies some chance to take body shops off the list who did not meet the criteria, allowed the insurance companies not to have to receive requests from body shops every week or so and eliminated that. The amendments are no improvement and those who are proponents of this bill knew the insurers had a difficult time with the bill as it started out and it is much worse now. Secondly, I would like you to consider this. As first proposed, this bill had two major Constitutional flaws. It prohibits free speech and it violates the interstate commerce clause of the U.S. Constitution. As it has been proposed to be amended, it also violates the equal protection clause of the Montana State Constitution and the U.S. Constitution because it allows independent agents to make recommendations but it doesn't allow agents who have contractual arrangements with one company like Farmers. This makes it a worse bill. As a legislator, you should be concerned about this. Courts in Illinois and Louisiana have already said that bills of this kinds are unconstitutional and our court here could do that. You can understand why insurance companies would take the time

and money to overturn these kinds of laws in Illinois and Louisiana. They make a lot of money in those states. They don't here in Montana. We may be simply stuck with this law that does not help consumers, drives away insurance companies, and drives up the premiums of those insurance companies that remain here.

{Tape : 3; Side : A; Approx. Time Counter : 0}

Questions from Committee Members and Responses:

SEN. THOMAS asked **Skip Clevenger** if his business declined when insurance companies started using the 1-800 numbers and sending their clients directly to Safelite or some other big glass company? **Mr. Clevenger** said it has affected his business. He didn't know the percentage. His business grew every year until lately and now it has stopped growing and he blames it partly on that technique. **SEN. THOMAS** asked if this was the nucleus of the real problem here? **Mr. Clevenger** said "yes".

SEN. COCCHIARELLA asked **Frank Crowley** if the 49 shops that he represents voted or supported this legislation. **Mr. Crowley** said there was a legislative committee that was delegated the responsibility of reviewing and drafting legislation. I would defer your question to Mr. Gregg who is the Executive Director. **Mr. Gregg** said that at the September 19, 1997 held in Great Falls, the members in attendance overwhelming endorsed legislation and asked the committee to pursue it. At that meeting we had approximately 35 members. He did not have an actual count.

SEN. COCCHIARELLA asked who exactly is Safelite. Are they a middleman, a distributor of glass, an installer of glass or what? **REP. SLITER** said his understanding of the question would be yes, all of the above. He wanted the question to be referred to another? **Mr. Larry McDonald** said that Safelite Auto Glass is the largest, corporate, retail glass company in the world. They are also a direct manufacturer of glass. The company is owned by a South African company called Belaran. The third party billing system was created by the insurance industry when they entered into contracts with Safelite. They are directly in competition with the small glass repair shops. They steer the customer. They control the manufacturing, the retail and they put out 80% of small businesses in Europe and now they are here. In five to

six years they will do this. **SEN. COCCHIARELLA** asked if there was another entity that is a manufacturer of glass that can provide glass to the shops. **Mr. McDonald** said there is another one in the process right now called PPG Pro Stars. Their deadline was March 15 for glass companies nationwide to sign their contract. They are the largest manufacturer in the world of auto glass. PPG owns Links. The insurance industry has entered into contracts with Links. What better way to control the business nationwide and in Montana by controlling manufacturing and by having people sign their contract and those contracts are paid for by the auto shops and it might cost $5000 according to **REP. QUILICI**. If Econo Glass was to sign a contract with PPG Pro Stars, it would cost our shop $50,000 the first year to belong.

SEN. COCCHIARELLA asked a lady who had an auto body repair shop if this bill was directed at the auto glass shops rather than the auto body shops. **She** said that the reason the auto body shops are included in the bill is they feel that the auto body shops will experience the same things that are happening to the auto glass shops in about five years. There are many direct auto repair shops already and they don't have to advertise. In Billings, Allstate has one direct auto body repair shop. Allstate is the third largest insurer in Montana. Should Allstate be able to direct 80% of their business to one shop?

{Tape : 3; Side : A; Approx. Time Counter : 10.7}

SEN. SPRAGUE asked **Larry** if he is a wholesaler and retailer. **Mr. McDonald** said Econo Glass is a wholesaler and he does buy from direct manufacturers in the U.S. which you have heard is Ford, Car-lite, Libby-Owens Ford, Guardian Industries, etc. Many of our customers are based throughout Montana, Wyoming, North and South Dakota. His company supplies the smaller shops. Everyday our customers complain that they cannot compete with Safelite Corp. because their customers are being steered through the network, third party billing, etc.

SEN. SPRAGUE asked **Gary Harris** if the small shops are intimidated by Safelite. **Mr. Harris** said "yes". **SEN. SPRAGUE** asked **Ms. Smoller** where she is from. **Ms. Smoller** said she was from Chicago. **SEN. SPRAGUE** asked how her company chooses their PRO shops and what does the acronym mean. **Ms. Smoller** said that PRO

stands for Priority Repair Option. If the customer asks one of our agents for information concerning an auto body shop, the agent gives them a number of shops either close to their home or office, whichever they prefer. They can choose one of those names or another shop.

SEN. ROUSH asked **Ms. Smoller** if Allstate actually gives the customer their choice of repair shops whether auto or glass. Can you provide a copy of a contract that you use with these repair shops in selecting who does the work in relationship to the requirements so that the committee can see why some of these shops cannot get on your list. **Ms. Smoller** said that Allstate looks at various qualities: good customer service programs in place; can they handle increased volume; etc. Allstate does not look to exclude companies, but they want to have confidence in the companies that are recommended to Allstate customers. Allstate's goal is to provide the customers with good information when they ask where to take their automobile. The goal is to have the customer choose. **SEN. ROUSH** asked if Allstate enters into a written contract with preferred companies. **Ms. Smoller** said "yes" and the way that the current law reads it does not permit companies to give names to any claimant unless they themselves ask for this information. Allstate cannot "steer" under current law.

SEN. BERRY asked **Greg Van Horssen** if you have a "Safelite" as such. **Mr. Van Horssen** said that his company does operate through a processor that is known as the Links system. It is a claims processing, claims handling arrangement that is owned, in the case, by PPG. He is not aware of any requirement that PPG glass be used and certainly State Farm reads the law and understands the law and does not direct, coerce, suggest as far as getting glass repaired because that is how the law reads. **SEN. BERRY** asked if that claims center is a glass shop. **Mr. Van Horssen** said that it is not. **SEN. BERRY** said that he has gone to Mr. Clevenger several times for new windshields and his rates have been matched once in a while. Someone will call up and offer a good deal, but the rates have never been lower than State Farm. He questioned the prospect that if these Safelite people are eliminated, everyones rates are going to go up.

{Tape : 3; Side : A; Approx. Time Counter : 21.8}

SEN. THOMAS asked **Gary Spaeth** about the preferred list issue. Are the requirements within the language so strict that the insurance company could not go beyond the list and have additives to it. **Mr. Spaeth** said that the list that is in the bill would help develop their standards. Once those standards have been developed then it would be up to the body shops to see if they can meet those standards. **SEN. THOMAS** said if there was a standard that they wanted to delineate who had been approved by the insurance company and for how long, that could be part of their list. **Mr. Spaeth** said "yes". **SEN. THOMAS** asked about the 1-800 number business. Couldn't the insurance company, under this bill, say Mr. Thomas you can go ahead and have your glass replaced at the shop of your choice, the cost is expected to be $300. If it is much more than that you need to get back to us. **Mr. Spaeth** said they could do that. The limitation is that the person with the 1-800 number can't be in direct competition. **SEN. THOMAS** said that would be a way of controlling cost and that is something they could do. **Mr. Spaeth** said the new 1-800 number could be developed that way. **SEN. THOMAS** then asked him to touch the cases that addressed the Constitutionality issue. **Mr. Spaeth** said that those two issues were looked at and his Department feels the bill could stand muster if the Department has to go into litigation.

Closing by Sponsor:

REP. SLITER closed. Thank you for an excellent hearing. We are talking about coercion and fairness. We are seeing unfair trade practices here. I propose the amendments to you **EXHIBIT(25)**. Please concur in the amendments and concur in the bill. **SEN. BECK** will carry the bill on the Senate Floor.

{Tape : 3; Side : A; Approx. Time Counter : 29.6}

HEARING ON HB 264

Sponsor: REP. DIANE WYATT, HD 43, GREAT FALLS

Proponents: Dan Whyte, Chief Legal Counsel, Secretary of State

Opponents: None

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 3-18-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

Montana Collision Repair Specialists (MCRS)

HB 506 -- Section-by-Section Summary

(with sponsor amendments proposed March 18, 1999)

SENATE BUSINESS & INDUST
EXHIBIT NO. 14
DATE 3-18-99
BILL NO. HB 506

Section 1

Protects insurance companies. Creates a restriction on body shops that mirrors 1999's HB 154 (Rep. Gallus) by forbidding auto body shops from offering consumers "kickbacks" to offset their insurance policy deductibles. Also puts auto body shops under "unfair trade practices" law in this respect.

Section 1 (line 30, page 1 - line 4 p.2) ***also*** puts insurance companies under the "unfair trade practices" law with respect to the 1997 ban on any insurance company attempts to influence a consumer's choice of body shop.

Section 2

Restriction on glass shops -- parallels existing restriction on body shops. Forbids glass shops from charging higher prices for people who have insurance than for those who don't. Protects insurance companies.

Section 3

Clarifies that body repair shops can't charge unfairly high prices -- no higher than a local market area's average price. And, assures that insurance companies can't simply pick a single "lowball" price from one shop in a town and thus make that the price they pay to everyone.

Section 4

Protects competition in the marketplace. Subsection (d) forbids insurance companies from cutting special deals with certain glass repair shops, or from owning glass repair operations in order to evade the intent of existing law. Subsection (e) forbids insurance companies from interfering with the marketplace by giving proprietary information about one glass repair facility's business to any others.

Section 5

Closes a loophole in existing law so that insurance companies can't continue to evade it -- and so that the law becomes more enforceable.

With proposed amendments, Subsection (1) forbids insurance companies and "captive agents" -- but not independent agents -- and ***except*** as provided in Subsection (2) -- from "talking up" or manipulating consumers in an unfair way to any specific auto body repair shop -- forbids them from encouraging the use of one shop over another, and

(OVER)

from interfering with consumer right to choice.

Note that with the amendments, independent insurance agents ARE allowed to freely answer consumer questions and to make recommendations, as long as they are not being directed by any insurance company as to what recommendations they make.

Subsection (1) also (in lines 19-20 on p. 4) creates the same restriction on interference in competition and the sharing of proprietary information about body shops that an earlier section did as regards glass repair shops.

As a balance to Subsection (1) -- to recognize the need for insurers and agents to be able to advise their customers -- Subsection (2) uses as a model an approach that one of the state's major carriers already uses -- an approach that works, that's fair to all concerned. This Subsection allows insurers to give consumers either:

-- a list of all auto body shops in a particular area from which to make a choice

-- OR a selective list of only those auto body shops that meet the insurance company's standards.

Subsection (3) makes the creation of any selective list fair to all body shops -- allows body shops to compete fairly with each other by being able to: know the insurance company's standards for the selective list; and to get on that selective list if they meet the standards. Any disputes about this would go to the commissioner.

Section 6 This is one of the new teeth this bill creates to increase compliance with the law we passed two years ago. This Section allows the attorney general and local county attorney, as well as the insurance commissioner, to enforce the law.

Exhibit # 15
From Senate Business + Industry
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

CORP.

Date: 02/08/99
Time: 12:37:11

p#: 024070
: 406-656-7814
.: 406 652 2015

ne: 406-633-2566
s: 406-656-0202

Referral/ Authorization#

408426

Type of

Deductible: $.00

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 15
DATE 3-18-99
BILL NO. HB 506

INSHOP SERVICE
NGBB

------ Subcontracting Agreement and Billing Instructions ----------

Sold To: Safelite Glass Corp.
Address: P.O. Box 182277
Columbus, Oh 43218-2277

Please Show On Your Invoice
1) Referral#: 408426
2) Full Vehicle Vin Number
3) Valid NAGS Part Numbers
4) Customer's Signature

- Do not include sales tax on your invoice.
- This is a sale to Safelite Glass Corp. for resale to the customer(subcontract).
- You will need our State Tax ID#: NO TAX
- Any additional parts, labor or a change in the work to be performed must b authorized before doing work. Call 1-800-890-1276 for approval or questio
- Safelite Glass Corp. will not reimburse for deductibles not collected.
- Shop Owner/Mgr(printed) Truman Strouf Signature Truman Strouf
- Installer Name(printed) Truman Strouf Signature Truman Strouf

AUTHORIZATION TO PAY:

I acknowledge receipt of goods and services requested and that all service were performed in a professional manner to my complete satisfaction. I authorize my insurance, fleet, or leasing company to pay Safelite Glass C directly for this claim. I understand I am personally responsible for payment of all or any portion of this invoice not covered by my insurance fleet, or leasing company.

Customer Signature Carol J McDonald Date 2-8-99

Please return your invoice signed by the customer,along with this signed /

RECEIVED
FEB 12 1999

1999 Montana Legislature

SENATE BUSINESS & INDUSTRY

About Bill -- Li

HOUSE BILL NO

INTRODUCED BY P. SLITER, C. AHNER, S. ANI
DALE, L. GRINDE, M. HALLIGAN, B. LAWSON,
PAVLOVICH, B. RANEY, T. SCHMIDT, I

Exhibit # 16
From Senate Business + Indust
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

A BILL FOR AN ACT ENTITLED: "AN ACT PROVI
IN AUTO GLASS INSTALLATION AND OTHER RE
INFORMATION AN INSURER MAY GIVE AN INSU
DIRECTING OF CONSUMERS BY INSURERS TO I
BUSINESSES AN UNFAIR TRADE PRACTICE; PR
PROCESSING AUTO GLASS AND OTHER REPAIR
DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

The signatures below are registered voters in the State Of Montana in support of House Bill No. 506

(287)

Paul Rapalas	Hamilton Montana, 59840
Chris Miller	Hamilton, MT 59840
	Hamilton MT 59840
Robert Weatly	Hamilton MT 59840
Stacey Rock	Hamilton MT. 59840
	HAMELTON MT. 59840
Kim Buckman	Darby, MT 59829
Mark Reynolds	Corvallis MT 59828
	VICTOR, MT 59875
Janie Glenn	Hamilton, Mt. 59840
Eve Meng Eve Meng	Hamilton, MT 59840
Mary Hall	Corvallis MT
	Victor MT

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 17
DATE 3-18-99
BILL NO. HB 506

UNITED SERVICES AUTOMOBILE ASSOCIATION
P.O. Box 35718, Colorado Springs, CO 80935-3718

THOMAS JENKO
8299 MONTANA HWY 35
BIGFORK MT 59911

November 23, 1998

Policyholder: Denise Wigginton
Reference Number: 3206193-7104-2-762
Date of Loss: November 21, 1998
Loss Location: Kalispell, Montana

Mr. Jenko:

This letter is per your request.

USAA holds the right to inspect your damages at one of our authorized locations. However, you can have the repairs done at any shop of your choice, but USAA will pay the damages based on the appraisal written by our authorized person/persons.

Should you have any questions regarding this issue, do not hesitate to call our office.

Sincerely,

Maribel Herbst
Auto Claims Representative
USAA MOUNTAIN STATES REGIONAL OFFICE
Phone: 1-800-531-8222 EXT. 36839
Fax Phone: 800-541-2947

3206193 - 9 - MT - 11/21/98 - 762 - 33 - C200

TRANSACTION REPORT P.01
NOV-23-98 MON 12:37

DATE	START	SENDER	RX TIME	PAGES	NOTE
NOV-23	12:36	5511	1'18"	2	OK

58

March 17, 1999

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 18
DATE 3-18-99
BILL NO. HB 506

Senator Dale Berry:

We would like to ask for your careful consideration of HB506. This bill is very important to our Businesses & Employees to have this Bill pass legislation. More important, it would give our customers & the consumers a Choice.

Thank you & we would appreciate your vote on HB506

Skip Clevenger	Bitterroot Glass - Hamilton
Butch Bain	Big Sky Autobody - Hamilton -
Darren Zito	Big Sky Auto body Hamilton
Don Cuy	Wimys Auto Body Hamilton
Tom Stephens	SKS. auto Body.
Doug Kent	Diamond Auto Glass
Rick Rowles	Peterson Glass. - Hamilton -

MTH 4

Ford Motor Company Quality Fleet Care Headquarters, PO Box 6065, Dearborn, MI 48121

FAX

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 19
DATE 3-18-99
BILL NO. HB 506

Date: ~~2/23/99~~ 2/23/99 Re/ax
Number of pages including cover sheet: 1

To:
Crystal Clear Auto Glass

Phone: (406) 543-2500
Fax phone: (406) 542-63[illegible]2
CC:

From:
MICHELLE HASBERRY

Phone: (800) 367-3221
Fax phone: (313)0390-3555

REMARKS: ☒ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

I received a copy of your billing from our Glass Vendor - Visteon *or Safelite*

We cannot authorize payment to your glass company unless you are an affiliate of Safelite, Visteon or Harmon/Henderson. If you are an affiliate of one of the above vendors, submit the invoice to the vendor for payment and we will pay the vendor. If you are not an affiliate of one of the vendors listed above, seek payment from the owner/driver of the vehicle.

Thank you

55

Robert Salas
C.A.R.S. Program Financial Analyst
Carlite Controller's Office

Visteon Glass Systems
12900 Huron River Dr.
Romulus, MI 48174
Tel 734-955-3173
Fax 734-955-3188
RSALAS1@VISTEONET.COM

Visteon™

See the possibilities™

Date: 07 December 1998

To: Attn: Michelle Hasberry
Quality Fleet Care

Fax: 313-390-3555
Total pages: 2
From: Robert Salas

Subject: C.A.R.S. - Quality Fleet Care Program

- Carlite received this invoice directly from this shop. Can you verify if this is an affiliate of your glass network.
- Call me if you have any questions.

THANK YOU MICHELLE

Copies to:

Fax

An Enterprise of Ford Motor Company

Dear Business Committee Members:

John Hertel
Mike Sprague
Dale Berry
Vicki Cocchiarella
Bea McCarthy
Glenn Roush
Fred Thomas

We the undersigned, urge your support of House Bills 181 and 506. The passage of this legislation is vital to our businesses and employees, but more importantly, to our customers and consumers all over Montana. It is guaranteed that if these bills fail to pass, many independant companies will go out of business and many people will be unemployed. Please consider this list as just a fraction of the supporters here in Montana.

NAME:	OCCUPATION:
[signature]	Crystal Clear auto Glass - CSR
[signature]	President Crystal Clear Auto Glass Inc
[signature]	Vice Pres Crystal Clear Auto Glass Inc
[signature]	CRYSTAL Clear Auto Glass Inc Missoula
[signature]	Ron's Auto Refinishers Manager
[signature]	Ron's Auto Refinishers Bodyman
[signature]	Ron's Auto Refinishers Painter
[signature]	Rons Auto Refinishers
[signature]	Ron's Auto Ref. Painter
[signature]	Ron's Auto Ref Bodyman
[signature]	Mid States Collision Repair
[signature]	Economy Body Specialist
[signature]	Auto Repair Tech @ Economy Body
[signature]	Economy Body Spec.
[signature]	Economy Body Spec.
[signature]	Big Sky Auto Mall

FROM : CRYSTAL CLEAR AUTO GLASS, INC. PHONE NO. : 1 406 543 2500 Mar. 18 1999 07:08AM P4

Darrin Ingram	Big Sky Auto Mall
Adam Mantua	Big Sky Auto Mall
Allison McKenzie	BIG SKY AUTO MALL
Josh Hamilton	Unique Body & Paint

FROM : CRYSTAL CLEAR AUTO GLASS, INC. PHONE NO. : 1 406 543 2500 Mar. 18 1999 07:09PM P5

(202)225-6760 phone (202)226-0938 fax www.house.gov/democrats

Today's Message

House Democratic Leadership
Richard A. Gephardt
U.S. House Democratic Leader

Thursday, March 18, 1999

GOP BUDGET PLAN REPEATS THE PAST WITH MASSIVE TAX CUTS INSTEAD OF KEY INVESTMENTS

The Republicans unveiled their budget plan on Wednesday -- a plan that is out of step with the priorities of American families, and that fails to make the key investments we need for a new century of continued economic growth.

The Republican budget fails future retirees: it does nothing to extend the life of the Medicare or the Social Security programs.

The Republican budget fails the economy: it siphons hundreds of billions of dollars into budget busting tax cuts instead of using the surplus to make the key investments that will spur economic growth.

The Republican budget fails families: it will require billions of dollars in painful budget cuts to make sure their budget balances. And it doesn't make the necessary investments in health care and education which all Americans need to prosper in the next century.

Democrats proposed amendments in the Budget Committee on a variety of issues to make sure that the surplus would be used for Social Security, Medicare, targeted tax cuts, and for investments in education and health care that are critical to our nation's future.

Republicans rejected these amendments. But Democrats will continue the fight for what's right for middle-class families, and for the fiscally responsible approach to our government's finances.

The Republican Budget -- Same Old Same Old
Republicans do nothing to extend the life of Social Security
Republicans do nothing to extend the life of Medicare
Republicans give away nearly $1 trillion in budget busting tax breaks
Republicans ignore key investments to strengthen middle-class families

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 20
DATE 3-18-99
BILL NO. HB 506

HB 506
Senate Business & Industry Committee
Room 325
8:00 a.m.
March 18, 1999
Written Testimony of State Farm Insurance Company
Gregory A. Van Horssen

Mr. Chairman & Members of the Committee:

Thank you for the opportunity to speak with you regarding HB 506. As you know, I represent State Farm Insurance Company in Montana. State Farm opposes HB 506 as it will certainly reduce the quality of service which we provide to our customers and will likely result in increased costs of business which translates into higher premiums.

Insurance is one of the most, if not the most highly regulated businesses in the state. This industry is constantly scrutinized by its regulator, the Montana Insurance Commissioner, in his efforts to make sure that the industry acts according to law. State Farm welcomes these inquiries. However, the provisions of HB 506, which have been portrayed as necessary to assist Montana consumers are both unnecessary and , indeed harmful, to both the business of insurance as well as the pricing of the product. For this reason, we oppose the bill.

State Farm Insurance Company is a Montana business. To be sure, we are in the business of providing insurance coverage for unforeseen occurrences. But another important aspect of our business is the opportunity to prove true service to our customers. Insurance customers, you and I, have come to rely on our agents and our companies for all sorts of advice. HB 506 will inevitably erode that relationship.

Let's also not lose sight of the fact that this is a very competitive industry. The pricing of a product, as with any other business, is very important. The Montana consumers of insurance, you and I, demand and deserve excellent service at the lowest price possible. HB 506 will have a clear negative impact on both service and price. I will address the bill section by section.

Section One of HB 506 will have a very predictable negative impact on the quality of service which companies currently provide to their customers. The pertinent language of the Section will establish that an insurer may not suggest, encourage, or even mention the name of any repair facility without first going through the nearly three pages of requirements found in Section 5 of the bill, pages 4,5and 6.

I will get to the requirements of Section 5 later, but the net effect of passing the language of Section 5 will be that insurance companies will likely choose not to create the list. Without the list, and under the language of this bill, insurers will not be allowed to provide their customers with vital repair information, even if requested. This will, of course reduce the quality of service to our customers.

SECTION 3 of the bill creates significant confusion regarding the minimum amount that an insurer must pay for auto repairs. I understand that the sponsor has asked that this section be returned to its original form.. This will make it more clear. However, we should ask WHY it is necessary to require an insurance company to pay no lesss than a minimum amount for repairs. As insurance premiums are driven by the cost of providing coverage, we should ask why it is in the Montana Consumer's best interest to place ANY lower limit on the cost amouint an insurance company can negotiate with a repair facility.

SECTION 4 of the bill places new prohibitions on your insurance company's attempts to keep costs low. It basically re-defines "glass broker" and disallows certain relationships between "glass brokers" and insurance companies. **Remember**, the cost of insurance is driven by the cost of providing coverage. Agreements for the processing of claims or bill create certain business efficiencies which translate into lower costs. These efficiencies keep the cost of insurance low and keep the companies competitive. All of this relates to lower premiums or, at least, keeping premiums in check..

Section 4 prohibits an insurer from entering into any relationship with a processing entity which may have a "financial interest" in an entity that provides glass for installation. WHAT DOES THIS MEAN? What exactly is a "financial interest" for purposes of this prohibition? Under this language, before an insurance company attempts to exercise its option to create a billing efficiency, it will have to ask potential claim processors about their financial portfolio. YOU wouldn't hand this information out if asked and I submit that these companies will refuse as well. Thus, this bill will simply destroy another avenue currently available to insurers in their efforts to keep costs low.

SECTION 5 is yet another effort to legislate how this particular business serves its customers and how these companies choose their business partners. This section prohibits your insurance company from suggesting or even mentioning the name of repair facilities unless the company first generates a list. If the insurer chooses to serve its customers by providing a list of good quality shops (as the customer has come to expect) under the bill, the insurer must first publish its standards of qulaity and then take all comers who represent that they meet those standards.

First, this requires your insurance company to publish the standards that it uses to determine how to best serve its customers. These standards, in most circles, are viewed as trade or business secrets.

Next, this list cannot exclude shops due to their size, location, number of persons employed or pricing. This will be a GREAT disservice to you as a customer. If your company MUST include a shop on the list that may take weeks to make siimple repairs to your vehicle, this will only damage the trust relationship that has developed between you and your company.

Further, your company has developed a trust relationship with many shops in your area over years of time. Your company should not be forced to list shops that it has no confidence in.

The increased costs associated with this bill should be clear. First, the insurer must publish its standards. Next, the insurer must create the list of all shops who say that they meet the standards. Third, the insurance company will be forced to inspect all of the shops at least quarterly to make sure that the shops actually do meet the standards. Fourth, the insurer has to generate written explanations to all shops who do not make the list. Fifth, all disputes are taken to the Commissioner of Insurance for resolution (no small expense). Sixth, the lists must be regularly updated. ALL OF THESE ADDITIONAL EXPENSES WILL BE REFLECTED IN HIGHER PREMIUMS.

Finally, it is important to note that, with the sponsor's amendments, once a shop is placed on the list, it cannot be removed. This, of course, is not at all in the consumer's best interest.

In closing, this bill is very bad for customer service. It is bad for competition. It is NOT a "consumer protection" measure as stated by the proponents. It is a repair facility protection measure that disregards the consumer's need for good service at low prices. We ask that you vigorously oppose this measure.

END

Exhibit # 21
From Senate Business & Indus
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

Testimony of Allstate Insuran
to the Senate Business and Indu
Regarding House Bill

Jodi M. Smoller
March 18, 1999

I. Introduction

Thank you for allowing Allstate Insurance Company to comment on HB 506. Allstate is the nation's second largest personal lines insurance company insuring more than 69,000 automobiles in Montana. Allstate is the third largest automobile insurer in Montana.

We are opposed to HB 506 because it will hinder customer service and satisfaction, will eliminate the workmanship guarantee that Allstate provides to claimants, will lead to higher insurance rates for Montana customers, and is a violation of the United States Constitution. Our customers want their auto claims handled quickly and efficiently at low costs. They want to be made whole without unnecessary inconvenience, frustration, and confusion. Under current law, upon their request, Allstate is able to provide Montana claimants with sufficient information to make an educated choice while protecting consumer safety by assuring prices sufficient to provide quality products and services.

However, HB 506 would take away Allstate's ability to respond to claimants' needs and questions during the claims process. Not only will this create dissatisfaction and frustration for Montana claimants, but it will lead to higher insurance premiums for our Montana customers without providing any additional consumer protection. Given that HB 506 will result in customer frustration, dissatisfaction, and higher insurance rates, this is not a pro-consumer bill.

II. Allstate's Priority Repair Option

Many claimants are first time claimants and have never been involved in an auto accident. Consequently, they have never required the services of an autobody shop. For claimants that request information about autobody shops, Allstate utilizes an auto collision direct repair program called Priority Repair Option or "PRO." Our goal is to give claimants the option of selecting a repair shop whose work we will guarantee. We developed PRO in response to the requests of consumers who asked us for advice on which repair shops to use. Rather than rely on some random system of informal referrals that may or may not be based on merit, we developed a network of repair shops that do quality work and provide exemplary and timely customer service at cost-effective prices. Based on the confidence we have in our PRO shops, Allstate will guarantee the workmanship of repairs made by recommended shops for as long as a claimant owns the car. Allstate does not consider the size of a shop or the number of employees when it considers a repair shop for its PRO program.

The high quality and cost-effectiveness of our PRO shop network is a result of our ability to select the participating repair shops. We can only guarantee the work of repair shops that we

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 22
DATE 3-18-99
BILL NO. HB 506

Current Language (with change proposed in HB-506)

30-14-225. Prohibited practices—advertising allowed—violations. (1) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy

Language of HB-154

30-14-225. Prohibited practices—advertising allowed—violations. (1) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer , ~~concurrent~~ in conjunction with the purchase of automobile repairs, receives cash or other valuable consideration;

Proposed change to HB-506

30-14-225. Prohibited practices—advertising allowed—violations. (1) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer , ~~concurrent~~ in conjunction with the purchase of automobile repairs, receives cash or other valuable consideration *when the coupon, credit, rebate or valuable consideration is passed along to the insurance carrier in the form of a claim in excess of the prevailing market price as set forth in 33-18-222.*

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 23
DATE 3-18-99
BILL NO. HB 506

STATEMENT OF
THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
IN OPPOSITION TO MONTANA HOUSE BILL 506

The National Association of Independent Insurers (NAII) is an insurance trade association representing insurance companies writing over 41 percent of personal auto policies in Montana. For all lines of property and casualty insurance in Montana, NAII members have over 32 percent on the total market share. NAII is the largest full-service property-casualty insurance trade association in the country, representing 619 companies nationwide.

NAII Policy Position

NAII supports the utilization of Physical Damage Repair Options due to their inherent cost saving benefits, improved efficiency, service to consumers, and the overall guarantee of quality workmanship in auto repair. Additionally, NAII supports Physical Damage Repair Options because they foster competition in the motor vehicle repair industry which helps to contain overall insurance costs. NAII has strongly supported the use and expansion of such programs due to the significant improvements these approaches bring about in efficiently and effectively processing claims. NAII opposes legislation or regulation that would unreasonably interfere with insurers' direct repair programs.

It is important to point out that insurers using Physical Damage Repair Options do not require their policyholders to use any designated facility. However, NAII does believe that insurers should be able to use appropriately determined premium discounts or guarantees of workmanship to encourage the use of repair facilities that provide the highest quality repair services at competitive prices.

Background

Many insurers contract with auto body shops in direct repair programs (DRPs) to repair policyholders' vehicles more quickly and inexpensively than other shops. DRPs are strictly an option, and consumers are not required to use them. Because insurers are familiar with the shops in these programs, they often allow them to begin repair work on a vehicle without previous inspection or appraisal, although the owner's consent is required before any work is begun.

Physical Damage Repair Options give insureds an option to utilize a program which offers fast and efficient service, since repairs can often be started immediately using pre-selected repair shops. By reducing the time automobiles are in repair shops, costs associated therewith, such as rental car expenses and job completion time, are reduced accordingly. This ultimately benefits policyholders by keeping premium rates down.

The Effect of House Bill 506 on Insurers and Consumers

House Bill 506 requires insurers to publish its "reasonable standards of quality, service and safety." This requirement adds cumbersome and costly bureaucratic steps to the claims settlement process. Current Montana law states that insurers cannot require a policyholder to use a particular shop. Nor can insurers provide an incentive to an insured to use a particular shop. These current provisions provide plenty consumer protection.

Direct Repair programs help reduce fraud by allowing insurers to develop long-term business relationships built on trust with quality-oriented repair shops. This lowers costs and increases reliability for consumers. House Bill 506 would harm fraud prevention efforts and place a burden on the working relationships that insurers have developed with auto repair facilities.

House Bill 506 bans insurance companies from even recommending a repair shop. Often policyholders that are new to an area in Montana and have an auto accident depend on their insurers for recommendations. House Bill 506 would truly harm consumers by placing a gag on insurance company's ability to recommend a reputable repair facility. Our member companies pride themselves on superior customer service and this will greatly harm that aspect of their business. No other business has the sort of requirements called for in HB 506. A doctor can recommend a pharmacy or a specialist without publishing extensive explanations of their selection criteria.

Furthermore, the commercial free speech implications of similar legislation have been held unconstitutional. In Allstate v. the State of South Dakota (871 F. Supp. 355, 1994) the Federal District Court held that statutes that prohibit an automobile insurer from recommending a certain company are an unconstitutional restriction on commercial speech. Commercial speech can only be restricted if the State shows that the restriction directly and materially advances a substantial state interest in a manner that is no more extensive than necessary to serve that interest. In the South Dakota case, the arguments asserted by the state that the law prevents local businesses from closing and protects consumer safety did not pass the constitutionality test.

The NAII urges this committee to seriously consider the benefits of direct and recommended repair programs to Montana policyholders and the questionable constitutionality of House Bill 506. In light of these issues, the NAII urges this committee to vote against House Bill 506.

EM:POWER

ACTION ALERT

URGENT! IMMEDIATE ATTENTION REQUIRED

TO: **NAII Member Companies Doing Business in Montana**

FROM: **David Smolensky and Laura Kotelman**

RE: **Recommended Repair – HB 506**

DATE: **March 17, 1999**

Don't ask, don't tell... The Montana Senate Committee on Business and Industry is scheduled to hear a "recommended repair" bill on Thursday, March 18. The bill, H. 506, would prohibit insurance companies from recommending a repair shop to their customers who have had their vehicles damaged in an accident. Any type of recommendation given by the insurance company, even one that will save time and money, would be considered an "unfair trade practice."

What's driving the bill... The "ma and pa" body shops have been out lobbying in support of H. 506. The body shops contend that insurance companies send consumers only to repair facilities that have arranged discounted fees for repairs sent by the insurance company. The repair shops also claim that these facilities do not have the consumer's best interest in mind and may not offer the highest quality workmanship.

Why we oppose this... The bill states that insurers *"may not require, suggest, or encourage the use of the name of a particular automobile repair business or location."* In English that translates to insurance companies better keep their mouths shut, or they will be accused of unfair trade practices. Many insurers contract with auto body shops to repair their insureds' damaged vehicles more quickly and at lower rates than other repair facilities. Consumers are <u>not required</u> to use these facilities, but they are given the <u>option</u> of having their vehicle repaired at a recommended shop or at any other repair facility of their choosing. By allowing insurers to recommend repair facilities, they can assure the consumer that high quality repairs will be made in a much more timely and efficient manner.

Let's look at the facts... Consumers rely on the experience and expertise of their insurance companies, especially in stressful situations such as an auto accident. Prohibiting insurers from recommending a quality repair facility unfairly limits consumers from making an intelligent decision on where to have their vehicle repaired. This drives up both the cost of auto repairs and insurance premiums.

Bill status...H. 506 passed out of the House on February 22, by a vote of 83 - 13. NAII and two member company representatives will testify against the bill at the March 18, Senate Committee hearing.

National Association of Independent Insurers
2600 River Road, Des Plaines, Illinois 60018-3286 • 847/297-7800 • FAX 847/297-5064

This is where you come in...H. 506 is scheduled to be heard by the Senate Committee on Business and Industry on Thursday, March 18, 1999, at 8:00 a.m. We need you to contact the body shops your company does business with and ask that they contact members of the Senate Committee on Business and Industry and/or testify at the upcoming hearing in opposition of H. 506. It is imperative that the members of the Committee hear of the opposition to H. 506 directly from the repair facility representatives. A complete list and contact information for the members of the Senate Committee on Business and Industry is included with this Action Alert. For more information about testifying, contact Laura Kotelman (lkotelma@naii.org) at 847/297-7800 ext. 395.

Talking Points...To aid the body shop representatives, the following Talking Points should be used as a basis for any communication with the members of the Senate Committee on Business and Industry.

- **Consumers rely on their insurance company for advice. Not allowing insurance companies to recommend repair shops known to be reputable, is like not allowing an architect to recommend a contractor, or not allowing an appliance salesman to explain the benefits of each TV or dishwasher that may be on display at a store. Consumers rely on the expertise and advice of professionals to aid in their decision making process. To eliminate this advice would be a disservice to consumers.**

- **Insurance companies that contract with body shops can offer high quality repairs in a much more timely and efficient manner, which benefits the consumer, the company and the repair shop.**

- **Often, repair facilities that have contracted with an insurance company are able to begin repair work on a vehicle without an inspection or appraisal by the insurance company, due to the insurance company's trust in the repair facility, which benefits consumers.**

- **Repair facilities that have contracted with an insurance company can help reduce fraud by allowing insurers to develop long-term business relationships built on trust and with quality-oriented repair shops.**

- **Consumers deserve to be made aware of all their repair facility choices.**

- **The recommendations insurance companies can offer consumers is essential. In cases such as when an individual may be new to an area and does not know where to go to have a vehicle repaired, the insurance company may be the individual's only resource. To prohibit this guidance would hurt consumers.**

- **One of the most valuable criteria an insurance company can have is the reputation of quality customer service. H. 506 will hurt both insurance companies and consumers by prohibiting insurance companies from offering the expertise and guidance consumers rely on.**

- **Vote NO on H. 506**

Operators are standing by...If you require any additional information about this bill, or if you would like to learn more about NAII's grass roots program, EM:POWER, please contact David Smolensky (dsmolens@naii.org) at 847/297-7800 ext. 387.

Senator Mike Sprague (R)
Senate District 6

District Information	Capitol Information
174 Erickson Court	State Capitol
Billings, MT 59105-2310	PO Box 201702
Phone: (406) 252-6027	Helena, MT 59620-1702
	Phone: (406) 444-4800

WWW: http://www.mt.gov/leg/branch/branch.htm

Senator Bea McCarthy (D)
Senate District 28

District Information	Capitol Information
1908 Ogden Street	State Capitol
Anaconda, MT 59711-1708	PO Box 201702
Phone: (406) 563-2909	Helena, MT 59620-1702
Fax: (406) 563-3378	Phone: (406) 444-4800

WWW: http://www.mt.gov/leg/branch/branch.htm

Senator Dale E. Berry (R)
Senate District 30

District Information	Capitol Information
852 Ponderosa Drive	State Capitol
Hamilton, MT 59840-9121	PO Box 201702
Phone: (406) 363-5676	Helena, MT 59620-1702
	Phone: (406) 444-4800

E-Mail: montanaland@cybernet1.com
WWW: http://www.mt.gov/leg/branch/branch.htm

Senator Fred Thomas (R)
Senate District 31

District Information	Capitol Information
3566 Holly Lane	State Capitol
Stevensville, MT 59870-6634	PO Box 201702
Phone: (406) 777-5000	Helena, MT 59620-1702
	Phone: (406) 444-4800

WWW: http://www.mt.gov/leg/branch/branch.htm

Senator Vicki Cocchiarella (D)
Senate District 32

District Information	Capitol Information
535 Livingston Avenue	State Capitol
Missoula, MT 59801-8003	PO Box 201702
Phone: (406) 728-7723	Helena, MT 59620-1702
	Phone: (406) 444-4800

WWW: http://www.mt.gov/leg/branch/branch.htm

Senator Glenn A. Roush (D)
Senate District 43

District Information	Capitol Information
Box 185	State Capitol
Cut Bank, MT 59427-0185	PO Box 201702
Phone: (406) 873-4452	Helena, MT 59620-1702
	Phone: (406) 444-4800

WWW: http://www.mt.gov/leg/branch/branch.htm

Senator John R. Hertel (R)
Senate District 47

District Information	Capitol Information
RR 1	State Capitol
PO Box 30	PO Box 201702
Moore, MT 59464-9801	Helena, MT 59620-1702
Phone: (406) 374-2281	Phone: (406) 444-4800

WWW: http://www.mt.gov/leg/branch/branch.htm

FILE No. 356 03/16 '99 08:20 ID:ALLSTATE SALES 303 779 3840 PAGE 4

SENATE BUSINESS & INDUST...
EXHIBIT NO. 24
DATE 3-18-99
BILL NO. HB 506

HOUSE BILL 506

Before the Senate Business and Industry Committee - March 18, 1999

For the record, my name is Sue Weingartner. I represent the **Alliance of American Insurers**. The Alliance is a national trade association representing over 270 property and casualty insurance companies. Alliance member companies write over $8 ½ billion in personal and commercial auto insurance policies in every state and the District of Columbia. I thank the Committee for this opportunity to present the Alliance's position in regards to proposed House Bill 506, and tell you that we are strongly opposed to the proposal that states that in a communication between an insurer and an insured or claimant regarding an insurance claim for glass or autobody claim the insurer may not do the following:

- Require, suggest or encourage the use of the name of a particular automobile repair business or location; or
- Mention or provide the name of a particular automobile repair business or location.

The bill would make automobile repairs and automobile insurance more expensive for consumers in Montana. All available evidence suggests that consumers have benefitted from the efforts of insurers to control claims costs.

Automobile repair costs are a substantial cost component of automobile claims. The expected cost of repairing damaged automobiles accounts for between 40 and 50 percent of the insurance premium for most auto insurance consumers. In an effort to control costs, in states where it is permissible, many insurers have developed repair networks where they can pre-screen for quality and negotiate prices. These networks have lowered the cost of doing business while improving customer satisfaction.

A 1991 study by the Insurance Research Council found that well over half (59%) of the respondents had confidence in the quality of service provided by a vehicle repair shop approved by their insurer. Insurers monitor the shops for good service because they want to keep policyholders happy. The network shops want to provide good service to keep receiving referrals from insurers. Preferred provider automobile repair shop networks can ensure quick, quality service at reasonable prices.

Though House Bill 506 is an apparent attempt to protect consumers, it would render the cost-savings features implemented by insurers ineffective. It would prohibit insurers from referring claimants and policyholders to shops that, through experience, insurance companies recognize as being superior. This legislation will harm the consumers that it seeks to protect since it would result in higher repair costs and a probably increase in insurance premiums.

The Alliance opposes any legislation that creates new restrictions on the ability of insurers to direct claimants and policyholders to particular repair shops. **Without strong evidence that the economic benefits outweigh the costs to consumers from the restrictions on insurers' cost savings programs, the Alliance urges you to reject House Bill 506.** Thank you for the opportunity to present our views on this issue.

25

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 25
DATE 3-18-99
BILL NO. HB 506

Amendments to House Bill No. 506
3rd Reading Copy
Requested by Representative Sliter
For the Business and Industry Committee

Prepared by Bartley Campbell
March 17, 1999 (4:08PM)

1. Page 3, line 8.
Following: second "~~lowest~~"
Insert: "lowest"

2. Page 4, line 6.
Strike: "producers"
Insert: "employees"

3. Page 4, line 8.
Following: "require"
Strike: "that"
Insert: "or encourage"
Following: "policy"
Insert: "to"

4. Page 4, line 12.
Strike: "or"

5. Page 4, line 14.
Following: "suggest"
Strike: "or encourage"

6. Page 4, line 20.
Following: "business"
Strike: "."
Insert: "; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.

(2)(a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

7 1

(ii) are contractually obligated to use one automobile insurer before using other insurers."
Renumber: subsequent subsections

7. Page 5, line 2.
Strike: "(2)(b)"
Insert: "(3)(b)"

8. Page 5, line 3.
Strike: "prior to providing the list,"

9. Page 5, line 10.
Strike: "at least quarterly during each calendar year,"

10. Page 5, line 13 through line 16.
Strike: "If" on line 13 through "." on line 16

11. Page 5, line 16.
Strike: "The"
Insert: "In the event of any dispute, the"

12. Page 5, line 20 through page 6, line 1.
Strike: subsections 5 and 6 in their entirety
Insert: "(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list."
Renumber: subsequent subsections

13. Page 6, line 10.
Strike: "(2)(a) or (2)(b)"
Insert: "(3)(a) or (3)(b)"

14. Page 6, line 16.
Strike: "on behalf"
Insert: "at the direction"

- END -

DATE March 18, 1999

SENATE COMMITTEE ON Bus & Ind.

BILLS BEING HEARD TODAY: HB 607, HB 506, HB 201, HB 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Laura Kotelman	847-297-7800	NAII	506		X
Larry W. Jones	543-4933 x140	Liberty Northwest	HB 607		X
Steve Yeakel	3-1674	MT Children's Alliance	607	✓	
Sami Butler	Helena	MNA	607	✓	
Greg Van Horssen	Helena	State Farm Ins	HB506		✓
Susan C. Witte	444-8975	Blue Cross Blue Shield	HB607		✓
Allen Thiessen	774-3392	Town & Country Repair	HB506	X	
Rick Cochrane	442-6700	Cochrane Insurance	HB506		X
Dean Brumberger	207-6986	Brumberger Const	HB506		X
Jim JARRETT	549-5085	MMA	HB607	X	
Al Smith	443-3124	MTLA	HB607	X	
Susan Good	442 6036	Self	HB607	X	
Tom Ellam	443-7531	MMBP	HB607		X

VISITOR REGISTER

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DATE March 18, 1999

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: HB 607, HB506, HB 201, HB 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Anita Bennett	752-3168	Montana Logging Assc	HB 607		✓
~~Val Snapp~~	~~444-8456~~	~~BCBS~~	HB 607		✓
Bill Olson	442-2268	AARP	HB 607	✓	
Tanya Ask	444-8297	Montana Health	HB 607		✓
MIKE BECKER	444-8409	BCBS MT	HB 607		✓
JOSEPH KNAPP	545-2853	MONTANA HOSPITAL	607		✓
JEFF HINZ	771 3103	MT CARE	607		✓
WEBB BROWN	442-2405x101	MT CHAMBER	607		X
BRIAN ZINS	443-4000	MT. MEDICAL ASSN	607	X	
SUE WEINBRENNER	443-1160	Nat. Am. Insurance	506		X
Gloria Hermanson	449-2334	MT Psychol. Assoc	607	X	
Ed BARTLETT	449-4590	MONT. POWER	HB 264	X	
Jodi Smoller	847 402-9180	Allstate	HB506		X

VISITOR REGISTER

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DATE 3/18/99

SENATE COMMITTEE ON Business

BILLS BEING HEARD TODAY: HB 506, 607, 201, 264

PLEASE PRINT

506

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Robert Cooley	443-2211	MCRS		✓	
[illegible]	442-8611	MCRS Jaimes Body Shop, Helena			
Tom Daubert	449-2095	MT Collision Repair Specialists		X	
Debbie Berney	441-4442	Prof. Ins. Agt. (PIA) of MT	506	(S)(A) Amend.	
Dennis Jenkins	543-8211	Professional Auto Glass	506	✓	
Jon Metropulos	442-8560	Farmer's Ins	506		X

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DATE 3-18-99

SENATE COMMITTEE ON Bus. & Labor

BILLS BEING HEARD TODAY: HB 607, 506, 201, 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Joyce Brown	4-2553	Dept of Admin	HB607		
Riley Johnson	3-3797	NFIB	HB607		✓
Tom Ebzery	441-7567	Yellowstone Com Health Plan St Hospital, Holy Rosary	HB607		✓
Chuck Butler	444-8263	Montana Health/BCBSMT	HB607		✓
TRUMAN Stout	652-2015	Billings, MT	HB506	✓	
Pat Stroop	652-2015	Billings MT	HB506	✓	
Ralph Wisla	752-1125	ABC Body Shop	HB506		✓
Amy Orser	4430330	Self	HB506	✓	

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DATE 3-18-99

SENATE COMMITTEE ON Bus. & Ind

BILLS BEING HEARD TODAY: HB 607, 506, 201, 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Bruce Rautio	443 7451	R&R Auto Glass LLC	506	V	
Robert W Loney	761 1250	Haggert Motor Inc	506	V	
Duane Test	284-2949	N. W. Glass	506	✓	
Curt Schuber	456-7341	Associated Glass	516	V	
Jay Smith	656 6661	Autostock	506	✓	
Jack Gregg	449-7801	~~Helena~~ Montana Collision Repair Specialists	506	✓	
Rep Trudi Schmidt		HD 42	506	✓	
Jon Tinsley		D 36 - Butte	516	✓	

VISITOR REGISTER

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DATE March 18, 1999

SENATE COMMITTEE ON Bus. + Ind.

BILLS BEING HEARD TODAY: HB 607, HB 506, HB 201, HB 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Lynda Reisbeck	442-9688	HB506	506		✓
Claudia Clifford	444-4613	~~HB~~ State Auditor's Office	607	✓	
Russ Hill	457-2280	New West	607		✓
Terry Hunt	542-1833	Farmers Insurance	506		✓
Bill McDonald	721-6075	Mont. Assn of Health Care Pro	607		✓
Dan Judge	442-1708	MT STATE AFL-CIO	HB 607	✓	
Brian Garrity	443-2453	Mental Health Assn of MT	607	✓	
Charles Brooks	442-2405	Billings Chamber	506	—	—
Jacqueline Lenmark	442-0730	Am. Ins. Assoc	506 607		✓
Jacqueline Lenmark	442-0730	Magellan Behavioral Health	607		✓
Bob Gilbert	442-2980	Cascade Auto Glass	HB506		✓
BRAD NIELSON	800.660.0513	CASCADE AUTO GLASS	HB506		✓
DAN WHYTE	4-2034	SEC. OF STATE	HB 264	X	

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DATE 3-18-99

SENATE COMMITTEE ON Bus & Ind

BILLS BEING HEARD TODAY: HB 607, 506, 201, 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Li Shepard	755-4540	Shepard's Glass	506	X	
Scott Talley	232-1386	Scotts Glass	506	X	
JEFF ALSBERG	228-8113	Triple A Glass Inc	506	X	
BUD LaRocque	543-2500	CRISTAL CLEAR GLASS INC.	506	X	
MATT BRUCE	654-2522	MATT'S Alignment & GLASS	506	X	
Larry Lasar	245-2999	Econo Glass Co	506	X	
Kenneth Jenkins	543-8211	Professional Auto Glass	506	X	
Marvin R Wacker	656-5783	Fas Break Auto Glass	506	X	
Sandra Kick	656-5783	Consumer	506	X	
Jacquelyn A. Ayers	256-8085	Golden Nugget Body & Paint	506	X	
Mike Oliver	245-2999	ECONO GLASS	506	X	
Robert Murphy	543-2500	Crystal Clear Auto Glass	506	X	
[illegible]	761-[illegible]50	[illegible] Motors, Inc	506	X	

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DATE 3-18-99

SENATE COMMITTEE ON Bus. & Labor

BILLS BEING HEARD TODAY: HB 607, 506, 201, 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Bernadette Clevenger	363-1044	Bitterroot Glass	506	X	
Lance Shalz	453-7927	Alpha Autoglass	506	X	
[signature]	452 5914	Ullys Paint & Body	506	X	
Midge Lorash	873-4101	Glacier Glass	506	X	
Bob Schulte	792-6911	Schulte Glass	506	X	
[signature]	587-4205	Bozeman Glass	506	X	
Donna Fasteneau	652-1440	Hanks Body Shop Inc	506	X	
[signature]	452 0142	3-Way Auto Body Inc	506	X	
[signature]	259-2570	Frontier Chev Co	506	X	
Kendall Sundheim	585-7336	Kendall Sundheim	506	X	
[signature]	434-2884	of Shelby Glass	506	X	
Patrick E McDonough	434-2884	Shelby Glass	506	X	
Tim Folk	262-2034	Hi-Line Glass	506	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE March 15, 1999

SENATE COMMITTEE ON Bus & Ind

BILLS BEING HEARD TODAY: ~~HB~~ 506, 607, 201, 264

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Gary D. Harris	406 259 1856	Auto Body Spec. Inc.	506	X	
Matt McDonnell	406 259-6328	Big Sky Collision Center	506	X	
Rick Pierzina	406 585-5420	Auto Body Experience	506		X
Brad Meuli	406 586-7791	A+D Auto Body Repair	506		X
Ron Mjelde	406 846-2858	RTC Home Improvement	506	X	
Dale Foster	406 563-3085	Anaconda Glass Service	506	X	
Bob Debus	406 252-7196	Northwest Glass	506	X	
Jeff Kuntz	406 543-4530	Blaineys Glass	506	X	
John Unsted	406 443-7632	Gateway Glass	506	X	
Robert E Davis	406 373-0956	Bob's Windbreak Auto Glass	506	X	
Lucky Seibert	406 628 7852	Seibert's Glass + Detail	506	X	
Rocco Critelli	406 259-2525	Critelli Glass	506	X	
Skip Clevenger	406 363-1044	B. Herbert Glass	506	X	

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MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 23, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 337, 3/10/1999
HB 421, 3/10/1999
HB 504, 3/10/1999
HB 523, 3/10/1999

Executive Action: HB 421; HB 523
HB 506; HB 607

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 506

Motion: **SEN. THOMAS moved that HB 506 BE CONCURRED IN.**

Motion: **SEN. ROUSH moved that HB 506 BE AMENDED.**

Discussion:

Bart Campbell explained **EXHIBIT(1)** Legal Analysis of **HB 506**, after it was distributed by Gary L. Spaeth, Deputy State Auditor.

{Tape : 1; Side : A; Approx. Time Counter : 7.5}

Greg Van Horssen, State Farm Insurance, said some language in the South Dakota v. Allstate case closely paralleled **HB 506**. Basically, Allstate had an agreement with a glass network. It was formed by a glass manufacturer, and the network contracts were glass repair shops for glass replacement. Allstate referred its policy holders to USA glass, which in turn referred them to glass shops. He said the court observed Allstate, because of the arrangement, was able to save transactional costs through electronic billing. This was because the network charged Allstate less than independent shops charged, and Allstate negotiated a price cap with the network. Independent glass repair facilities in South Dakota brought the suit because of loss of revenues. Allstate said this was an unconstitutional restriction on free speech, while South Dakota argued it had a substantial interest in creating the statute. The court agreed with Allstate.

Networks were corporate citizens who were involved in interstate commerce, and any statute which would infringe on a network's ability to do business in South Dakota would be an unconstitutional violation of the commerce clause. The South Dakota federal court also found there already were other things which could be done to enforce this requirement. He believed the court said it was not necessary to create an additional burden, if they could effect the same purpose with an existing law.

Frank Crowley, Attorney, said the State Auditor's office was the agency responsible for enforcing the bill. He had talked with both the auto repair and glass facilities and advised them the commercial free speech rights of the insurance companies must be

respected. This bill had painstakingly been structured to recognize those commercial free speech rights. The case of Allstate v. South Dakota case was never appealed to the Circuit Court of Appeals; in fact, it remained as a district court opinion in the district of South Dakota and was not binding in any jurisdiction outside that. Also, the regulations which were overturned were different and distinguishable from the regulations before the Committee today. That legislation prevented the insurance companies from advising them there was a network; however, this bill did not do that. It addressed the relationship between the insurance company and the networking entity.

The relationship between the consumer and the provider of services was the relationship which needed the focus. The sole duty of the insurance company was to reimburse for the services, i.e. stand by to indemnify for the loss. Here, the insurance company was intruding itself into the relationship between the customer and the shop. In other words, it was dictating the terms and conditions of that relationship. Legislation, such as **HB 506**, protected the sanctity of the relationship between the customer and the service provider. Unless that was the starting point, it was easy to lose sight of the fact the insurer's only responsibility and duty was to indemnify, rather than to control the relationship.

The goal of the South Dakota law was different from **HB 506**, which was simply designed to preserve consumer choice, not to prevent the carriers from advising their insureds about the existence of a network. The focal point of **HB 506** was how they used the network in relation to the insured, not protect the body shops which were there. The information given at the hearing reflected this bill was not simply to protect the economic interest of the independent shops, but focused on what happened to the consumer. Nothing in the bill kept the networks from operating in the state. It was a question of "going the extra step", which was happening in Montana. The bill said there were commercial free speech rights and networks, but it was not lawful to venture beyond that, so the the relationship would not be abused by impinging on the right of the consumer. He was confident this bill would withstand any Constitutional test.

{Tape : 1; Side : A; Approx. Time Counter : 18.9}

SEN. FRED THOMAS asked if, according to the bill, he called his insurance company for a windshield replacement, could the carrier discuss the potential lowest prevailing price. **Frank Crowley** said currently, the provisions regarding inducements and incentives applied only to auto repair facilities. If the discussed information was characterized as an inducement, in respect to glass, the law which would not prohibit it.

SEN. THOMAS said he was referring to glass, and if the insurance company wanted to talk cost, they could. **Mr. Crowley** said current law apparently did not have the inducements and incentives language.

SEN. JOHN HERTEL asked the same question of **Greg Van Horssen**, who said incentives and inducements was not part of the language, but it was State Farm's belief any discussion of price between shops would be viewed by the Commissioner as coercion. That was a real concern under the statute.

SEN. DALE BERRY asked if centers in Montana assessed the claims. **Mr. Van Horssen** said State Farm had a program called "Service First". In that program, a consumer called a company which asked the consumer where he wished to get the work done, i.e. the choice was left up to the consumer. If the customer chose to use a shop which was part of "Service First", the consumer would go directly there. Therefore, there was no need to get separate estimates; in fact, the consumer would go to that shop, get the work done and State Farm would pay the claim to the facility.

SEN. GLENN ROUSH asked if the "Service First" cost the consumers an additional fee. **Greg Van Horssen** said there was no separate, or additional fee, for this service. It came as part of the policy.

SEN. ROUSH asked if "Service First" dictated the customer must use that vehicle in case of a claim. **Mr. Van Horssen** said it did not.

{Tape : 1; Side : A; Approx. Time Counter : 26.2}

EXECUTIVE ACTION ON HB 506

Motion: **SEN. THOMAS moved that HB 506 BE CONCURRED IN.**

Motion: **SEN. ROUSH moved that AMENDMENTS HB050601.ABC EXHIBIT(2) BE CONCURRED IN.**

Discussion:

Frank Crowley explained Amendments HB050601.abc.

SEN. BEA MCCARTHY asked **Greg Van Horssen** to explain the amendments in **EXHIBIT(3)**.

{Tape : 1; Side : A; Approx. Time Counter : 40.8}

SEN. HERTEL asked why there were two distinctions on amendments #2 and #6, between independent and captive insurers. **SEN. THOMAS** said if a person worked for an insurance company as a captive agent, he or she did what the company asked; however, an independent agent could work with his or her clients. He suggested that went to the heart of the bill, because it was not desirable to have the company dictate where the client should go.

SEN. HERTEL asked if the agent did not have the ability to direct the client to a specific body shop. **SEN. THOMAS** said it allowed the agent to work with the clients to give them the ability to make the choice. The issue at hand was when you did not work for the company, you were able to give choices. The broad base of the old law was still in effect; however, **HB 506** had stricter language with the amendments.

SEN. VICKI COCCHIARELLA interpreted **SEN. HERTEL's** question as being why was a distinction being made, just because a person did or did not work for a company. In other words, if all consumers were to be protected, why should one have to comply while the other was "let off the hook." **SEN. THOMAS** said the difference was simple, in that if a person worked for an insurance company, this strictly applied; however, if you did not work for a company, the agent would be able to work with the client in making the decision.

SEN. COCCHIARELLA said she understood the difference, but did not understand why they would be separated out. **SEN. THOMAS** said it was because one was not under the control of the insurance company, while the other was.

{Tape : 1; Side : B; Approx. Time Counter : 0}

SEN. DALE BERRY said it was his understanding that independent agents representing different companies meant the consumer did not have to go to a certain entity. In other words, there was not only one company which would have control.

SEN. COCCHIARELLA asked if an independent agent represented several insurance companies, was it true none of those companies had a network? **SEN. THOMAS** said only the agent was involved in the amendment, because the companies had to comply strictly with the law. The agent at the local level could give the options to the client. If the agent worked for one company, the structure was vertical, i.e. he or she was controlled by the corporate structure. An independent agent was not under one company; therefore, he or she did not have to do what it said. He said he supported the bill because he was afraid the small glass shops would be gone before too long. He gave an example of how when the client dialed the 800 number, he or she would most likely get Safelite Auto for a glass claim. They would control the claim, which meant the small shops would not get the business. The amendment would allow the small shops to compete.

SEN. BERRY said it was a narrow line between the service by local providers, but it was a wide line between a local agent helping a client and SafeLite Glass Corporation (the 800 number). He said the worry a new person in town would not be able to find a glass shop unless someone told him, made it seem the consumer had no responsibility. It seemed a list should be kept of poor providers, based on customer complaints. The system was losing something between not being able to help the clientele and dominating. There was a difference between the customer asking if the company could give the name of someone, and a provider giving the 800 number. Also, it was one thing when the billing company was an accounting firm, but quite another when it was a wholesaling glass firm which fixed windshields.

SEN. ROUSH said he did not think **HB 506** would erode using the 800 number for information, and he felt that should be left. He said he did not have a problem with the insurance company talking to the customer about a provider of service. But he did have a problem with the company directing the customer that he or she had to go there. He referred to small Montana towns which had one or two glass repair shops. If one of the shops was where the insurance company would direct the customer, it would not be long before the other was out of business. This bill would enhance closing up local businesses.

{Tape : 1; Side : B; Approx. Time Counter : 7.3}

Vote: Motion that AMENDMENTS BE CONCURRED IN carried 6-1 with SEN. HERTEL voting no.

SEN. COCCHIARELLA asked why body shops were included in the bill, because she had talked to some body shop owners who said the system was working fine. **SEN. MIKE SPRAGUE** said it was working for preferred body shops, but not necessarily for the others. Leveling the playing field was why body shops were included in the bill.

SEN. THOMAS said it was his understanding body shops were included to put "teeth" into the old law.

Motion/Vote: SEN. ROUSH moved that HB 506 BE CONCURRED IN AS AMENDED. Motion carried 6-1 with SEN. COCCHIARELLA voting no. SEN. TOM BECK will carry **HB 506** on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 10.8}

HEARING ON HB 504

Sponsor: REP. KARL OHS, HD 33, HARRISON

Proponents: Ed Grogan, MT Medical Benefit Plan
Scott Smith, Bozeman
Page Dringman, Health Insurers Assoc. of America
Kelly King, Citizen
Dean Randash, Napa Auto Parts, Helena

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 3-23-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	X		
SEN. VICKI COCCHIARELLA	X		
SEN. BEA MC CARTHY	X		
SEN GLENN ROUSH	X		
SEN. FRED THOMAS	X		
SEN MIKE SPRAGUE, VICE CHAIRMAN	X		
SEN. JOHN HERTEL, CHAIRMAN	X		

SENATE BUSINESS & INDUST.
EXHIBIT NO. 1
DATE 3-23-99
BILL NO. HB 506

MEMO

To: Senate Business and Industry Committee
From: Gary L. Spaeth, Deputy State Auditor for Legal
Subject: Legal Analysis of HB 506(Glass and body Shop Steering limitation Bill)
Date: March 22, 1999

This memo is being written to the issues raised by some of the opponents to HB 506 concerning whether HB 506 would pass constitutional review if passed. Specifically, five cases were provided the committee for review.

ISSUE FOR REVIEW

Whether HB 506 would survive scrutiny under both the First Amendment and Interstate Commerce Clause of the US Constitution?

CONCLUSION

HB 506 should pass constitutional scrutiny under both provisions because the present bill is significantly different than the provisions of the Louisiana and South Dakota statutes that were struck down. It should be noted that HB 506 was drafted with the case law provided to the committee in mind.

DISCUSSION

The issues being presented center around what is constitutionally protected Commercial Freedom of Speech and whether the bill is in impermissible infringement by the State of Montana on interstate commerce. It should be noted at the very beginning that Commercial Speech is protected and that the state cannot unnecessarily infringe on interstate commercial. Yet the cases provided to the committee can be distinguished.

HB 506 primarily does two things:

1. It prohibits insurance companies from contracting with a third party that has an interest in the installation of glass and providing billing information to a competitor of a glass installation company. At present Safelite manufacturers and installs glass and operates an 800 claims processing number for several insurance companies. Safelite then processes the bills for all claims by any of the insurance companies by all installers not just Safelite. This allows a company like Safelite to obtain substantial information about their competitor's operation including volume of business and charges.

2. It prohibits insurance companies from recommending, mentioning or suggesting any autobody shop to their insureds for the repair of a vehicle. It does allow an insurer to provide a list of all

body shops which meet their standards of quality, pricing and service.

I. Discussion of the cases provided to the Committee and why they are distinguishable from the present bill.

A. The two cases of Virginia State Board of Pharmacy et al v. Virginia Citizens Consumer Council, Inc. et al. and Silvia S. Ibanez, Petitioner v. Florida Department of Business and Professional Regulation, Board of Accountancy both deal with commercial free speech. The conclusion reached in each of those cases was that commercial free speech was protected under the first amendment to the U.S. Constitution. The **Board of Pharmacy** decision struck down a provision of the Virginia law making it unprofessional conduct for a licensed pharmacist to advertise any price for prescription drugs. The **Ibanez** decision concluded that an attorney who was also a licensed CPA could include that designation in her advertising since the advertising was truthful and there was no demonstration of an outstanding state need.

The court in **Board of Pharmacy** relief upon the test set forth in Central Hudson Gas & Electric Corp. V. Public Service Comm'n of New York(1980). The **Central Hudson** court, per Justice Powell designed a test to indicate when commercial speech is protected and when it is not. The test if in four parts. (1) The commercial speech must not be misleading or involve illegal activity. (2) The governmental interest advanced by the regulation must be substantial. (3) The regulation must directly advance the asserted governmental interest (4) The governmental regulation must not be more extensive than is necessary to serve the governmental interest at state.

What the **Hudson** test along with Board of Trustees of State University of New York v. Fox(1989) indicated that commercial free speech was not as protected as non-commercial free speech. The **Fox** case allowed the university system to restrict sales by commercial entities in the dorm and in that instance allowed the university system to ask a Tupperware company from selling in the dorms.

How does that affect HB 506. In applying the four part test of **Hudson**, we can see there is a substantial interest in allowing the state to restrict communication between an insurer with their insured. There are numerous other instances where the code presently restricts what an insurer can communicate with there insureds.

The listing below is just a brief summary of some of the restrictions presently found in the code.

Section 33-18-208 prohibits contract allowing for rebates in contract agreements.

Section 33-18-208 limits inducements by prohibiting the delivery of stock option or other capital stock.

Section 33-18-213 prohibits the extension of credit to a policyholder by a producer.

Section 33-18-305 prohibits political contributions by an insurer.

Section 33-18-304 places restrictions on interlocking ownership and management.

Section 33-18-302 prohibits anyone from making, publishing, disseminating or circulating any oral or written statement or any pamphlet, circular, article, or literature which is false of maliciously critical of or derogatory to the financial condition of an insurer.

Section 33-18-301 prohibits a life insurer and its officers, employees, or representatives from owning managing, supervising, operating or maintaining any mortuary, or undertaking establishment.

There are many other sections of the insurance code which places restrictions on an insurer's commercial free speech. The theme that seems to run through each of these restrictions is that restrictions on the insurer are permissible as long as the restrictions are reasonable.

In the present instance, the insurer can contract with third parties and can establish networks to process their glass claims. They can operate an 800 number or contract with third party to operate an 800 number on their behalf. The only limitation is that entity cannot be in reality a competitor with other glass installers in the state. The bill also places restrictions on the insurer or its third party processor from providing billing and other critical information obtained from competitors to other competitors.

The substantial state interest here is protection of competition and free enterprise and preventing propriety information from being disseminated unfairly.

As to the Autobody provisions of the bill, the important provision here is not that commercial free speech is restricted but rather how commercial speech is regulated. The insurer is not prohibited from communicating with their insureds but only how that communication is to be done. In the present instance that communication may be done through the use of a list which is prepared by the insurer allowing for the establishment of standards. The provision further allows that anyone meeting those standards may be placed on the list. The is much less onerous than the out prohibition of a life insurer from being involved in the mortuary business in the state(33-18-301). At present, most insurers have some type of arrangement with different shops based on their internal standards. This bill only opens that process to participation for anyone who wants to participate if they meet those standards.

It is important to closer examine the other cases given for consideration.

The South Dakota regulations that were overturned in the **Allstate** case are substantially different than HB 506. Before proceeding, it should be noted that while many shops contended before the hearing that this legislation is necessary for their survival, this legislation is not protectionist like the South Dakota legislation. The South Dakota law prohibited the insurer from advising their insureds of the existence of a network. In HB 506, there is no prohibition against an insurer using a net work or advising their insureds of the existence of a network like in South Dakota. The only limitation is that the network if used to process claims cannot be involved in the manufacture or installation of glass.

The South Dakota court was concerned that the South Dakota law was protectionism and would result in the insurer paying higher prices. That doesn't exist in the present proposal. Also, the court was quite clear that the State has the burden to demonstrate that is restrictions are tailored in a reasonable manner to serve a substantial state interest. The state interest is protection of commerce by prohibiting a competitor from obtaining critical proprietary information about its competitors by being allowed to process their insurance claims. It does not protect local independent glass dealers from going out of business, they will still need to compete against the larger national glass companies except they won't have to provide those competitors with an unfair advantage by giving them billing information.

The Court in striking down the Louisiana law concluded that it was protectionist and interfered with interstate commerce. The Louisiana law outright banned insurance companies from entering into contracts with networks. Net works are not banned and in fact can continue to operate in Montana unlike Louisiana. Its just that under HB 506, the networks cannot be used to process the claims and billing of the insurance company thereby obtaining substantial proprietary information about how their competitors operate and bill.

Both the South Dakota and Louisiana Courts were concerned that the prohibition would result in higher costs being charged. Based on that conclusion, they ruled that it was an impermissible interference with interstate commerce. Underf HB 506 all glass installers will need to continue to competitive in installing glass. HB 506 even requires that insurance companies not be required to pay more than the lowest competitive and prevailing market price in a local area. Thus there should be no impact on installation costs when this bill passes and thus no interference with interstate commerce.

As to the second part of the bill dealing with the body shops, this would not be protectionist nor an interference with interstate commerce. It just restricts how an insurer is able to communicate with their insureds. As was concluded in the first part of this memo, the restrictions are permissible under the **Hudson** and **Fox** cases. The insurer is able to provide information to their insureds that will result in good customer service. This will not result in greater costs to the insurer but only provides that anyone who meets the standards of the insurer can be placed on the list. This really is no different than the program presently being operated by State Farm. It

would ber hard to hard o argue that State Farms costs and rates aren't competitive therefore there should be no interference with interstate commerce.

The South Dakota and Louisiana cases primarily concluded that the insurance company cannot be prohibited from establishing networks or entering into contracts with companies that have net works. There is not prohibition in HB 506 for an insurance company having contracts with different shops. They can still have these types of agreements but that if they provide a list to their insureds, they must include all shops which meet their standards and not just the shops which they have agreements with. This is very allowable under both the South Dakota and Louisiana cases. This is not protectionists and actually insures greater competition and probably lower rates which is an important state interest.

CONCLUSION

This memo is just a quick overview of HB506 in light of the cases provided by the committee. HB 506 is quite different from the laws enacted in South Dakota and Louisiana. HB 506 does not unreasonable restrict commercial free speech with the state having a clear and allowable reason for restricting speech in the present instance. While this memo only dealt with some of the permissible burdens, there are several others. The State interest is to provide for a free and competitive market place whereby competitors are not given an unfair advantage by obtaining significant proprietary information about the operation of their competitors.

There is no interference with interstate commerce because there no indication that this Bill will result in higher costs both for glass and autobody installation, the Bill actually protects insurers from having to pay not more than the lowest competitive and prevailing market price in a local area. The insurers are allowed to have networks and also to enter into agreements with different shops. These types of restrictions on insurers are found throughout the insurance already and the state should prevail on any challenge to HB 506 if passed.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3-23-99
BILL NO. HB 506

Amendments to House Bill No. 506
3rd Reading Copy
Requested by Representative Sliter
For the Business and Industry Committee

Prepared by Bartley Campbell
March 17, 1999 (4:08PM)

1. Page 3, line 8.
Following: second "~~lowest~~"
Insert: "lowest"

2. Page 4, line 6.
Strike: "producers"
Insert: "employees"

3. Page 4, line 8.
Following: "require"
Strike: "that"
Insert: "or encourage"
Following: "policy"
Insert: "to"

4. Page 4, line 12.
Strike: "or"

5. Page 4, line 14.
Following: "suggest"
Strike: "or encourage"

6. Page 4, line 20.
Following: "business"
Strike: "."
Insert: "; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.

(2)(a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

95

(ii) are contractually obligated to use one automobile insurer before using other insurers."
Renumber: subsequent subsections

7. Page 5, line 2.
Strike: "(2)(b)"
Insert: "(3)(b)"

8. Page 5, line 3.
Strike: "prior to providing the list,"

9. Page 5, line 10.
Strike: "at least quarterly during each calendar year,"

10. Page 5, line 13 through line 16.
Strike: "If" on line 13 through "." on line 16

11. Page 5, line 16.
Strike: "The"
Insert: "In the event of any dispute, the"

12. Page 5, line 20 through page 6, line 1.
Strike: subsections 5 and 6 in their entirety
Insert: "(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list."
Renumber: subsequent subsections

13. Page 6, line 10.
Strike: "(2)(a) or (2)(b)"
Insert: "(3)(a) or (3)(b)"

14. Page 6, line 16.
Strike: "on behalf"
Insert: "at the direction"

- END -

96

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3-23-99
BILL NO. HB 506

HB 506
Proposed Sponsor Amendments
Comments

Amendment 1. This amendment simply replaces the existing language to keep the phrase "lowest prevailing market price" in the law. This is a good amendment as it re-inserts some clarity into the law.

Amendment 2. This amendment is an attempt to write independent agents out of the requirements of this bill. We think that this amendment should be strongly resisted. If this bill is truly a "consumer" bill, then all insurers, producers and employees should have the same requirements placed upon them.

Amendments 3, 4 and 5. These amendments are acceptable so long as they apply to all insurers, producers, employees, etc.

Amendment 6. This amendment should be strongly resisted. This amendment lets independent agents suggest or mention particular repair shops but prohibits "captive" agents from doing so. This will create a distinct service advantage for independent agents in serving their customers. The amendment amounts to unequal treatment of two types of insurance producers. It will create a truly uneven playing field.
Again, if this is a true "consumer bill" then the prohibitions should apply equally to ALL insurance producers.

Amendments 7 & 8. These amendments are acceptable.

Amendment 9. This amendment should be resisted. This amendment is probably meant to reduce the number of times that an insurance company must update the required list. Instead, the amendment would require the company to update the list constantly. This will require the insurer to expend substantial resources in constantly inspecting repair facilities every time a new one enters the state and says that it meets an insurer's requirements.

Amendment 10 & 11. This amendment is confusing. It apparently removes the requirement that the insurer provide a written explanation as to why a shop was not placed on the list. However, the remaining language makes mention of a written explanation. Also, it is somewhat problematic to allow the Commissioner of Insurance to second guess an insurance company's decision regarding listing of a repair facility.

Amendment 12. This amendment is acceptable in that it strikes existing sections (5) & (6). The suggested new language is probably unnecessary as the entire bill is meant to prohibit any mention of one shop over another. Also, some shops may provide free pick up and delivery or some other service or may be "veteran" shops used by the insurance company for years. If this is truly a "consumer" bill, do we really want to keep this information from the consumer?

Amendments 13 & 14. These amendments are acceptable.

SENATE STANDING COMMITTEE REPORT

March 23, 1999

Mr. President:

We, your committee on **Business and Industry** report that **House Bill 506** (third reading copy -- blue) **be concurred in as amended.**

Signed: Sen J Hertel
Senator John Hertel, Chair

To be carried by Senator Tom Beck

And, that such amendments read:

1. Page 3, line 8.
Following: second "~~lowest~~"
Insert: "lowest"

2. Page 4, line 6.
Strike: "producers"
Insert: "employees"

3. Page 4, line 8.
Following: "require"
Strike: "that"
Insert: "or encourage"
Following: "policy"
Insert: "to"

4. Page 4, line 12.
Strike: "or"

5. Page 4, line 14.
Following: "suggest"
Strike: "or encourage"

Committee Vote:
Yes 6, No 1.

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98

6. Page 4, line 20.
Following: "business"
Strike: "."
Insert: "; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.

(2)(a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

(ii) are contractually obligated to use one automobile insurer before using other insurers."
Renumber: subsequent subsections

7. Page 5, line 2.
Strike: "(2)(b)"
Insert: "(3)(b)"

8. Page 5, line 3.
Strike: "prior to providing the list,"

9. Page 5, line 10.
Strike: "at least quarterly during each calendar year,"

10. Page 5, line 13 through line 16.
Strike: "If" on line 13 through "." on line 16

11. Page 5, line 16.
Strike: "The"
Insert: "In the event of any dispute, the"

12. Page 5, line 20 through page 6, line 1.
Strike: subsections 5 and 6 in their entirety
Insert: "(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list."

Renumber: subsequent subsections

13. Page 6, line 10.
Strike: "(2)(a) or (2)(b)"
Insert: "(3)(a) or (3)(b)"

14. Page 6, line 16.
Strike: "on behalf"
Insert: "at the direction"

- END -

100

SENATE COMMITTEE OF THE WHOLE AMENDMENT

House Bill 506
Senator Tom Beck

March 25, 1999 1:30 pm

Mr. Chairman:

I move to amend **House Bill 506** (second house second reading copy -- tan).

Signed: Sen Tom Beck
Senator Tom Beck

And, that such amendments to **House Bill 506** (second house second reading copy -- tan) read as follows:

1. Page 5, line 20.
Following: "location that" on line 20
Insert: "meets the standards and"

2. Page 5, line 21.
Following: "~~standards and~~"
Strike: "MEETS THE STANDARDS AND

3. Page 5, line 25.
Following: "DISPUTE,"
Strike: "THE written" on line 25 through ". The" on line 27
Insert: "the" on line 27

- END -

HB 506

SENATE

ADOPT unan. voice

AC HB 506-1

REJECT

671330CW.srf

HOUSE BILL NO. 506

INTRODUCED BY P. SLITER, C. AHNER, S. ANDERSON, T. BECK, M. BRAINARD, R. DALE, L. GRINDE, M. HALLIGAN, B. LAWSON, B. MCCARTHY, D. MOOD, K. OHS, B. PAVLOVICH, B. RANEY, T. SCHMIDT, D. SHEA, J. STOVALL, C. TUSS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices -- advertising allowed.** (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured

REFERENCE BILL AS AMENDED

regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or

(b) mention or provide the name of a particular automobile repair business or location."

Section 2. Section 33-18-221, MCA, is amended to read:

"**33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the ~~lowest~~ prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may

agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service."

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222. ~~Lowest prevailing~~ PREVAILING market price.** For purposes of 33-18-221, ~~and~~ 33-18-223, and 33-18-224, "~~lowest~~ prevailing market price" means the ~~lowest~~ LOWEST competitive and generally accepted market price in a local area. The ~~lowest~~ prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; ~~or~~

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the ~~lowest~~ prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile

glass dealers to perform glass replacement or glass repair work or that installs or manufactures glass or provides glass for installation."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile ~~body~~ repair shops prohibited -- certain requirements -- allowances.** (1) An insurance company, including its ~~producers~~ EMPLOYEES and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~that~~ OR ENCOURAGE a person insured OR A CLAIMANT under the policy TO use a particular automobile repair business or location; ~~or~~

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person OR A CLAIMANT or provides an incentive or inducement for an insured person OR A CLAIMANT to use a particular automobile repair business or location; ~~or~~

(c) except as provided in subsection (2):

(i) suggest ~~or encourage~~ the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business~~.~~; OR

(D) SUGGEST OR DIRECT ITS APPOINTED PRODUCERS TO SUGGEST, MENTION, PROVIDE THE NAME OF, OR ENCOURAGE THE USE OF A PARTICULAR AUTOMOBILE REPAIR BUSINESS OR LOCATION TO AN INSURED PERSON OR A CLAIMANT.

(2) (A) SUBSECTIONS (1)(A), (1)(B), AND (1)(C)(III) APPLY TO ALL INSURANCE PRODUCERS; AND

(B) SUBSECTIONS (1)(C)(I) AND (1)(C)(II) APPLY ONLY TO INSURANCE PRODUCERS THAT:

(I) WRITE AUTOMOBILE INSURANCE FOR PRIMARILY ONE INSURER; OR

(II) ARE CONTRACTUALLY OBLIGATED TO USE ONE AUTOMOBILE INSURER BEFORE USING OTHER INSURERS.

~~(2)~~(3) ~~For the purposes of this section, an incentive or inducement does not include~~ An insurer may:

(a) ~~providing~~ provide an insured person or a ~~customer~~ CLAIMANT with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~customer~~ CLAIMANT that offer a warranty for the automobile repair services provided by the businesses or locations; OR

(b) ~~providing~~ provide an insured person or a ~~customer~~ CLAIMANT with a list of particular ~~body shops~~ automobile repair businesses or locations that are reasonably close to the insured person or ~~customer~~ CLAIMANT ~~meeting~~ that meet reasonable standards of quality, service, and safety ~~when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location and the request is not prompted or suggested by the insurer~~.

~~(3)~~(4) If an insurer ~~provides~~ ELECTS TO PROVIDE an insured person OR A CLAIMANT with the list described in subsection ~~(2)(b)~~ (3)(B), the insurer shall:

(a) ~~prior to providing the list, file in writing with the commissioner~~ UPON THE REQUEST OF ANY AUTOMOBILE REPAIR BUSINESS OR LOCATION, MAKE AVAILABLE the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards ~~must be available to the public and may not include as criteria~~ MAY NOT EXCLUDE A BUSINESS OR LOCATION FROM BEING ON THE LIST SOLELY ON THE BASIS OF the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) ~~at least quarterly during each calendar year,~~ include on the list any automobile repair business or location that MEETS THE STANDARDS AND indicates in writing to the insurer that the business or location ~~intends to meet the standards and MEETS THE STANDARDS AND~~ DESIRES TO be placed on the list.

~~(4)~~(5) ~~If an insurer does not include an automobile repair business or location on the list allowed under subsection (2)(b) when the business or location has requested to be included on the list, the insurer shall provide to the rejected business or location a written explanation for why the business or location has failed to meet the standards required for inclusion. The~~ IN THE EVENT OF ANY DISPUTE, ~~THE written explanation must be provided within 60 30 days of the insurer's receipt of the automobile repair business's or location's request. The~~ THE business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

~~(5) An automobile repair business or location may not submit a written request to an insurer to be placed on the list provided for in subsection (2)(b) more than once each calendar year. An insurer may~~

~~remove an automobile repair business or location from the list if the business or location ceases to meet the reasonable standards of quality, service, and safety established by the insurer as provided in subsection (3)(a). An insurer shall provide a written explanation of why the automobile repair business or location has failed to meet the standards and must allow the business or location at least A MAXIMUM of 120 days to meet the standards before being removed from the list.~~

~~(6) If an insurer changes its reasonable standards of quality, service, and safety, the changes must be filed with the commissioner for public inspection PROMPTLY GIVEN TO EACH AUTOMOBILE REPAIR BUSINESS OR LOCATION ON THE LIST. An automobile repair business or location must be allowed at least 120 days from the time that the changes are filed to meet the changed standards before the business or location may be removed from the list.~~

(6) IN DISTRIBUTING THE LIST PROVIDED FOR IN SUBSECTION (3) TO AN INSURED OR A CLAIMANT OR IN ANY DISCUSSION OF THE LIST WITH AN INSURED OR A CLAIMANT, AN INSURER MAY NOT EXPRESS A PREFERENCE OR MENTION AN ADVANTAGE OR INDUCEMENT FOR THE INSURED OR THE CLAIMANT TO USE A PARTICULAR AUTOMOBILE REPAIR FACILITY OR LOCATION ON THE LIST.

(7) The insured may use a business or location at the insured's OR CLAIMANT'S sole discretion~~, and the~~. THE insurance company shall pay for the reasonable and necessary cost of the automobile ~~body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ repair services than the ~~lowest~~ prevailing market price, as defined in 33-18-222. An insurer shall inform the insured person OR CLAIMANT of the insured person's OR CLAIMANT'S rights under this subsection ~~and may not mention a particular automobile repair business or location~~.

~~(4)~~(8) If the insured person OR CLAIMANT uses an automobile repair business or location not on a list provided under subsection ~~(2)(a) or (2)(b)~~ (3)(A) OR (3)(B), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(5)~~(9) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(6)~~(10) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting ~~on behalf~~ AT THE DIRECTION of the insurance company.

~~(7)~~(11) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"**33-18-1006. Desist orders for prohibited practices -- court injunctions.** (1) Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred."

NEW SECTION. **SECTION 7. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

Ex 1
4/14/99
HB 506

Gregory A. Van Horssen
36 S. Last Chance Gulch
Helena, MT. 59601

HB 506
Free Conference Committee Members
State Capitol Building
Helena, MT. 59601

April 13, 1999

Dear Senator Hertel:

HB506 the Auto Glass/Auto Body Repair bill will soon be before you in a free conference committee for your consideration. As a Free Conference Committee, you are authorized to revisit and amend any portion of the bill before your committee. With this correspondence, State Farm Insurance Company urges you to consider rejecting this bill in its entirety. As an alternative, State Farm asks that you consider amending the bill in such a fashion as to allow insurers to continue providing good quality service to our customers at an affordable price.

HB506 has been touted as necessary to protect small auto repair and glass shop businesses in Montana. It does not. Current statute already prohibits directing or requiring the use of a given repair facility. If this bill does anything to protect small business in Montana, it does so at the expense of the several hundred thousand insurance consumers of the state. From State Farm's perspective, the current bill will threaten the existence of two State Farm programs which have resulted in significant cost reductions for our insured customers.

State Farm's glass repair program, Glass Central, is jeopardized by HB506. This program has resulted in significant cost reductions which are, in part, responsible for millions of dollars in dividends and premium reductions to our Montana customers over the last year. The new prohibitions found in Section 4 of the bill threaten the existence of the Glass Central operation in Montana and, consequently, threaten the recently achieved cost savings.

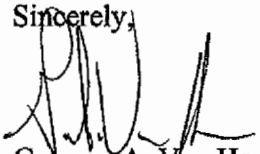
State Farm's auto repair program, Service First, is also seriously threatened by HB 506. Under the current language of the bill, State Farm may be forced to discontinue the use of <u>any</u> lists in serving its customers. This is because the bill creates liability for the insurance company for any shops which are included on the list. The bill also places significant restrictions on the insurance company's ability to limit the list in any way.

Of further concern is the fact that HB506 prohibits our agents from suggesting, recommending or even mentioning appropriate repair facilities. This will clearly infringe on our ability to provide excellent service to our customers.

State Farm asks you to reject these provisions of the bill on behalf of our 185,000 auto policy holders in Montana. I have provided proposed amendments which will make the bill more acceptable to State Farm and will still allow this company to serve its customers properly.

Thank you for your consideration.

Sincerely,



Gregory A. Van Horssen

Ex 2
4/14/99
HB506

Amendments to House Bill No. 506
Reference Copy

For the House Conference Committee

Prepared by Stephan Maly
April 14, 1999 (9:11AM)

1. Title, line 12.
Following: ";"
Insert: "AND"

2. Title, lines 13 and 14.
Following: "MCA" on line 13
Strike: the remainder of line 13 through "DATE" on line 14

3. Page 7, line 19.
Strike: section 8 in its entirety

- END -

11

FREE

CONFERENCE COMMITTEE

on Senate amendments to House Bill 506
Report No. 1, April 14, 1999

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered Senate amendments to **House Bill 506** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

For the House:

Paul Sliter
Chair

Gary Matthews

Joe McKenney

Amendment Coordinator

Chief Clerk of the House

For the Senate:

John Hertel
Chair

Tom Beck

Glenn A Lund

And, recommend that **House Bill 506** (reference copy -- salmon) be amended as follows:

1. Title, line 12.
Following: ";"
Insert: "AND"

2. Title, lines 13 and 14.
Following: "MCA" on line 13
Strike: the remainder of line 13 through "DATE" on line 14

FCCR#1
HB 506

ADOPT

REJECT

AC HB 506-1

810923CC.ham

3. Page 7, line 19.
Strike: section 8 in its entirety

- END -

HOUSE BILL NO. 506

INTRODUCED BY P. SLITER, C. AHNER, S. ANDERSON, T. BECK, M. BRAINARD, R. DALE, L. GRINDE, M. HALLIGAN, B. LAWSON, B. MCCARTHY, D. MOOD, K. OHS, B. PAVLOVICH, B. RANEY, T. SCHMIDT, D. SHEA, J. STOVALL, C. TUSS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AND AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices -- advertising allowed.** (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured

REFERENCE BILL: INCLUDES FREE CONFERENCE COMMITTEE REPORT DATED 4-14-99

regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or

(b) mention or provide the name of a particular automobile repair business or location."

Section 2. Section 33-18-221, MCA, is amended to read:

"**33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the ~~lowest~~ prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may

agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service."

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222. ~~Lowest prevailing~~ PREVAILING market price.** For purposes of 33-18-221, ~~and~~ 33-18-223, and 33-18-224, "~~lowest~~ prevailing market price" means the ~~lowest~~ LOWEST competitive and generally accepted market price in a local area. The ~~lowest~~ prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; ~~or~~

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the ~~lowest~~ prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile

glass dealers to perform glass replacement or glass repair work or that installs or manufactures glass or provides glass for installation."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile ~~body~~ repair shops prohibited -- certain requirements -- allowances.** (1) An insurance company, including its ~~producers~~ EMPLOYEES and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~that~~ OR ENCOURAGE a person insured OR A CLAIMANT under the policy TO use a particular automobile repair business or location; ~~or~~

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person OR A CLAIMANT or provides an incentive or inducement for an insured person OR A CLAIMANT to use a particular automobile repair business or location; ~~or~~

(c) except as provided in subsection (2):

(i) suggest ~~or encourage~~ the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business~~.~~; OR

(D) SUGGEST OR DIRECT ITS APPOINTED PRODUCERS TO SUGGEST, MENTION, PROVIDE THE NAME OF, OR ENCOURAGE THE USE OF A PARTICULAR AUTOMOBILE REPAIR BUSINESS OR LOCATION TO AN INSURED PERSON OR A CLAIMANT.

(2) (A) SUBSECTIONS (1)(A), (1)(B), AND (1)(C)(III) APPLY TO ALL INSURANCE PRODUCERS; AND

(B) SUBSECTIONS (1)(C)(I) AND (1)(C)(II) APPLY ONLY TO INSURANCE PRODUCERS THAT:

(I) WRITE AUTOMOBILE INSURANCE FOR PRIMARILY ONE INSURER; OR

(II) ARE CONTRACTUALLY OBLIGATED TO USE ONE AUTOMOBILE INSURER BEFORE USING OTHER INSURERS.

~~(2)~~(3) ~~For the purposes of this section, an incentive or inducement does not include~~ An insurer may:

17

(a) ~~providing~~ provide an insured person or a ~~customer~~ CLAIMANT with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~customer~~ CLAIMANT that offer a warranty for the automobile repair services provided by the businesses or locations; OR

(b) ~~providing~~ provide an insured person or a ~~customer~~ CLAIMANT with a list of particular ~~body shops~~ automobile repair businesses or locations that are reasonably close to the insured person or ~~customer~~ CLAIMANT ~~meeting~~ that meet reasonable standards of quality, service, and safety ~~when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location and the request is not prompted or suggested by the insurer~~.

~~(3)~~(4) If an insurer ~~provides~~ ELECTS TO PROVIDE an insured person OR A CLAIMANT with the list described in subsection ~~(2)(b)~~ (3)(B), the insurer shall:

(a) ~~prior to providing the list, file in writing with the commissioner~~ UPON THE REQUEST OF ANY AUTOMOBILE REPAIR BUSINESS OR LOCATION, MAKE AVAILABLE the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards ~~must be available to the public and may not include as criteria~~ MAY NOT EXCLUDE A BUSINESS OR LOCATION FROM BEING ON THE LIST SOLELY ON THE BASIS OF the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) ~~at least quarterly during each calendar year,~~ include on the list any automobile repair business or location that MEETS THE STANDARDS AND indicates in writing to the insurer that the business or location ~~intends to meet the standards and MEETS THE STANDARDS AND~~ DESIRES TO be placed on the list.

~~(4)~~(5) ~~If an insurer does not include an automobile repair business or location on the list allowed under subsection (2)(b) when the business or location has requested to be included on the list, the insurer shall provide to the rejected business or location a written explanation for why the business or location has failed to meet the standards required for inclusion. The~~ IN THE EVENT OF ANY DISPUTE, ~~THE written explanation must be provided within 60 30 days of the insurer's receipt of the automobile repair business's or location's request. The~~ THE business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

~~(5) An automobile repair business or location may not submit a written request to an insurer to be placed on the list provided for in subsection (2)(b) more than once each calendar year. An insurer may~~

~~remove an automobile repair business or location from the list if the business or location ceases to meet the reasonable standards of quality, service, and safety established by the insurer as provided in subsection (3)(a). An insurer shall provide a written explanation of why the automobile repair business or location has failed to meet the standards and must allow the business or location at least A MAXIMUM OF 120 days to meet the standards before being removed from the list.~~

~~(6) If an insurer changes its reasonable standards of quality, service, and safety, the changes must be filed with the commissioner for public inspection PROMPTLY GIVEN TO EACH AUTOMOBILE REPAIR BUSINESS OR LOCATION ON THE LIST. An automobile repair business or location must be allowed at least 120 days from the time that the changes are filed to meet the changed standards before the business or location may be removed from the list.~~

(6) IN DISTRIBUTING THE LIST PROVIDED FOR IN SUBSECTION (3) TO AN INSURED OR A CLAIMANT OR IN ANY DISCUSSION OF THE LIST WITH AN INSURED OR A CLAIMANT, AN INSURER MAY NOT EXPRESS A PREFERENCE OR MENTION AN ADVANTAGE OR INDUCEMENT FOR THE INSURED OR THE CLAIMANT TO USE A PARTICULAR AUTOMOBILE REPAIR FACILITY OR LOCATION ON THE LIST.

(7) The insured may use a business or location at the insured's OR CLAIMANT'S sole discretion~~, and the~~. THE insurance company shall pay for the reasonable and necessary cost of the automobile ~~body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ repair services than the ~~lowest~~ prevailing market price, as defined in 33-18-222. An insurer shall inform the insured person OR CLAIMANT of the insured person's OR CLAIMANT'S rights under this subsection ~~and may not mention a particular automobile repair business or location~~.

~~(4)~~(8) If the insured person OR CLAIMANT uses an automobile repair business or location not on a list provided under subsection ~~(2)(a) or (2)(b)~~ (3)(A) OR (3)(B), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(5)~~(9) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(6)~~(10) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting ~~on behalf~~ AT THE DIRECTION of the insurance company.

~~(7)~~(11) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"**33-18-1006. Desist orders for prohibited practices -- court injunctions.** (1) Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred."

NEW SECTION. **SECTION 7. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

~~NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.~~

- END -

AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AND AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices -- advertising allowed.** (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business

or location; or

(b) mention or provide the name of a particular automobile repair business or location."

Section 2. Section 33-18-221, MCA, is amended to read:

"**33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the ~~lowest~~ prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service."

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222. ~~Lowest prevailing~~ Prevailing market price.** For purposes of 33-18-221, ~~and~~ 33-18-223, and 33-18-224, "~~lowest~~ prevailing market price" means the ~~lowest~~ lowest competitive and generally accepted market price in a local area. The ~~lowest~~ prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; ~~or~~

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the ~~lowest~~ prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile

glass dealers to perform glass replacement or glass repair work or that installs or manufactures glass or provides glass for installation."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile ~~body~~ repair shops prohibited -- certain requirements -- allowances.** (1) An insurance company, including its ~~producers~~ employees and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~that~~ or encourage a person insured or a claimant under the policy to use a particular automobile repair business or location; ~~or~~

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or a claimant or provides an incentive or inducement for an insured person or a claimant to use a particular automobile repair business or location;

(c) except as provided in subsection (2):

(i) suggest the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business~~.~~; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.

(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

(ii) are contractually obligated to use one automobile insurer before using other insurers.

~~(2)~~(3) ~~For the purposes of this section, an incentive or inducement does not include~~ An insurer

may:

(a) ~~providing~~ provide an insured person or a ~~customer~~ claimant with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~customer~~ claimant that offer a warranty for the automobile repair services provided by the businesses or locations; or

(b) ~~providing~~ provide an insured person or a ~~customer~~ claimant with a list of particular ~~body shops~~ automobile repair businesses or locations that are reasonably close to the insured person or claimant ~~meeting~~ that meet reasonable standards of quality, service, and safety ~~when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location~~.

~~(3)~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:

(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.

(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.

(7) The insured may use a business or location at the insured's or claimant's sole discretion~~, and the~~. The insurance company shall pay for the reasonable and necessary cost of the automobile ~~body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ repair services than the ~~lowest~~ prevailing market price,

as defined in 33-18-222. An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.

~~(4)~~(8) If the insured person or claimant uses an automobile repair business or location not on a list provided under subsection ~~(2)(a) or (2)(b)~~ (3)(a) or (3)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(5)~~(9) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(6)~~(10) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting at the direction of the insurance company.

~~(7)~~(11) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"**33-18-1006. Desist orders for prohibited practices -- court injunctions.** (1) Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred."

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -